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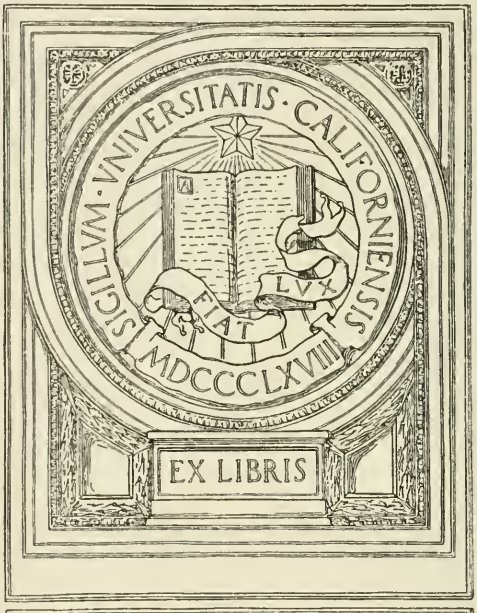

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WISCONSIN TAX LAWS

A COMPILATION OF THE GENERAL LAWS OF THE STATE
RELATING TO THE

ASSESSMENT AND COLLECTION OF TAXES

INCLUDING ALL AMENDMENTS TO DATE

WITH EXPLANATORY NOTES AND DECISIONS

COMPILED BY
WISCONSIN TAX COMMISSION

MADISON, WISCONSIN
1920

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INTRODUCTION

No complete edition of the tax laws of the state has been separately issued since 1912. In 1918, Chapters 48, 48c and 49 as they appear in the statutes of 1917, were published in pamphlet form, but without explanatory notes or court decisions. In the meantime numerous changes have been made in the tax laws by the enactment of new statutes and the amendment or repeal of old ones, and there is an urgent demand for a compilation of the various provisions relating to the assessment, equalization and collection of taxes for the use of town, city and village officers. An effort has been made to meet this demand by collecting and presenting in a single volume the existing statutory law on the subject. All changes in tax laws since the former publication whether effected by legislation or judicial decisions, up to and including the amendments made by the legislature of 1919, have been considered and combined, and the following pamphlet it is believed presents the law on the subject as it now exists.

As the primary purpose of this pamphlet is to present the law relating to the levy and collection of taxes on the general property of the state by local officers, special acts for the taxation of railroads and other state wide public service companies which are assessed by state authority and pay taxes or license fees directly to the state treasurer, do not come within its scope. Separate pamphlets have been prepared and issued relating to the taxation of inheritances, incomes and public utilities.

As the levy and distribution of school and highway taxes, and the apportionment of county taxes are made by local officers, the statutory provisions relating thereto are included. While chapter 48c, creating the tax commission and defining its powers and duties, including sections 1087—45 to 1087—57, authorizing reassessments in certain cases, is not directly

applicable to local officers, it is so closely related to their duties that it has been thought best to include it in this compilation. Chapter 474 of the Laws of 1905, authorizing appeals from the equalizations made by county boards is also included as bearing upon the remedies available to aggrieved assessment districts. The duties of the office of county supervisor of assessments were transferred to assessors of incomes by the income tax act, and the provisions defining their powers and duties are retained.

Except as to certain provisions in the statute relating to the selection, term of office and compensation of assessors, and the levy and apportionment of taxes which are included in the first chapter, the order of the statutes as heretofore published has been preserved. Where sections have been renumbered in the process of revision the old section numbers are given in parentheses as an aid in identifying them with court decisions and former instructions pertaining thereto. Long and involved statutes and the more important notes and instructions have been divided into paragraphs under black faced headings for greater clearness and convenience.

As local officers derive their authority from the statutes and must be governed by them, explanatory notes and court decisions are inserted immediately after the sections to which they relate. These notes are based on the letter of the statutes as construed by the Supreme Court and interpreted by the tax commission from time to time. The aim has been to present under the several sections of the statutes cited such comments and instructions as are deemed necessary to enable taxing officers to apply the law with definiteness and certainty. Citations from court decisions have been freely made under the leading sections of the statutes as an aid to a better understanding of the law. It is hoped that the compilation may prove helpful to taxing officers and will aid them in securing fuller and more equitable assessments.

Dated at Madison, Wisconsin, this 10th day of January, 1920.

WISCONSIN TAX COMMISSION,
NILS P. HAUGEN,
THOMAS E. LYONS,
CARROLL ATWOOD,
Commissioners.

CONSTITUTIONAL PROVISION

SECTION 1, ARTICLE VIII. "THE RULE OF TAXATION SHALL BE UNIFORM, AND TAXES SHALL BE LEVIED UPON SUCH PROPERTY AS THE LEGISLATURE SHALL PRESCRIBE. TAXES MAY ALSO BE IMPOSED ON INCOMES, PRIVILEGES AND OCCUPATIONS, WHICH TAXES MAY BE GRADUATED AND PROGRESSIVE, AND REASONABLE EXEMPTIONS MAY BE PROVIDED."

The provision that "the rule of taxation shall be uniform" relates to the property tax only, but does not limit the exercise of the taxing power to property alone. *C. & N. W. Ry. Co. vs. State*, 128 Wis. 553; *Nunnemacher vs. State*, 129 Wis. 190; Income Tax Cases, 148 Wis. 456.

This section empowers the legislature to prescribe or specify the property which shall be taxed, making all such property one class and ordains that the rule of taxation shall be uniform in respect thereto. For that purpose the legislature may divide property into appropriate classes, but each class must be uniformly taxed or wholly exempted. The rule of uniformity requires uniformity of burden, but not necessarily of subject matter or procedure. *C. & N. W. Ry. Co. vs. State*, 128 Wis. 553.

The uniformity rule requires that statutory exemptions must be based upon legal classification. The rule does not relate to rates alone. It may be violated as effectively by arbitrary exemptions as by unequal rates, and it is so violated when exemptions are given to one chartered college greater than to other colleges of the same class. *Lawrence University vs. Outagamie Co.*, 150 Wis. 244.

Inheritance, income and occupation taxes are not subject to the uniformity rule, but all taxes imposed by the state are subject to the equality clauses of the state constitution and to the fourteenth amendment of the federal constitution. *Black vs. State*, 113 Wis. 205; *Nunnemacher vs. State*, 129 Wis. 190; *Income Tax Cases*, 148 Wis. 456; *Northwestern Mutual Life Insurance Company vs. State*, 163 Wis. 484.

Taxes can only be levied or raised for a public purpose "such as subserves the common interest and well being of the people of the state," *State v. Frochlich*, 118 Wis. 129, 141. Bonus tax cases decided December, 1919.

Where there is no public purpose in the sense of carrying on some part of the machinery of government, there is no power to tax. *State ex rel. Owen vs. Donald*, 160 Wis. 125 of opinion; *I Cooley on Taxation*, 22–24 (3rd Edition).

The taxing power of a state does not extend beyond its territorial limits, but within such limits it may tax persons, property, incomes, or business. If an interest in property is taxed, the situs of either the property or interest must be found within the state. If an income be taxed, the recipient thereof must have a domicile within the state or the property or business out of which the income issues must be situated within the state so that the income may be said to have a situs therein. *State ex rel. Manitowoc Gas Co. v. Wis. Tax Commission*, 161 Wis. 111.

CHAPTER I

ASSESSORS—ELECTION, TERM OF OFFICE AND COMPENSATION; TAX LEVIES; REPORTS AND STATISTICS

Election of town officers. SECTION 60.19 (808, 808a). At the annual town meeting there shall be elected in each town the following officers, viz.: Three supervisors, one of whom shall be designated on the ballots as chairman, unless changed by section 663 of the statutes, a town clerk, a treasurer, an assessor (either two or three, if the town board at their last meeting before such an election shall have so ordered), one justice of the peace, and in towns containing a village, or city of the fourth class, wholly within its limits a justice of the peace residing within such village or city who shall have jurisdiction throughout the county, so many constables, not exceeding three, as shall have been ordered by the last preceding annual town meeting. In all counties which contain a population of not less than one hundred thousand, such election shall be held biennially in the even-numbered years, and town officers shall hold office for two years. No person not an elector of the town shall hold any town office, and no person shall hold the offices of treasurer and assessor at the same time.

Sections 808 and 808a consolidated and renumbered by chap. 551, 1919.

Village officers; elections. SECTION 61.19 (875, 875m). At the annual election in each village there shall be chosen the following officers, viz.: A president, a clerk, a treasurer, an assessor, a supervisor, a constable, and a justice of the peace. In villages in counties having a population of at least two hundred and fifty thousand no supervisor shall be elected and the other officers named shall be elected for a term of two years on the first Tuesday of April of each year in which is to be held a general election for state officers. All other officers, except trustees, shall be appointed by the village board at their first meeting after the annual election unless such board shall otherwise provide. No person not a resident elector in such village shall be eligible to any office therein. The village clerk may appoint a deputy clerk for whom he shall be responsible, and who shall take and file the oath of office, and in case of the absence, sickness or other disability of the clerk, may perform his duties and receive the same compensation unless the village board shall appoint a person to act as such clerk.

Sections 875 and 875*m* revised, consolidated and renumbered by chap. 691, 1919.

Under the constitution (Sec. 9, Art. 13) it is not competent for the legislature to provide that the officers of the town within which a village is situated shall be the officers of the village. The latter must elect or appoint its own officers. *Cole v. Black River Falls*, 57 Wis. 110, *State v. Krez*, 88 id. 135.

This section was not amended or repealed by the enactment of section 875*a*, which only applies to villages incorporated under special charters. *State v. Thomas*, 150 Wis. 190, 136 N. W. 623.

Section 875*m*. A failure to divide the six trustees into classes, as provided by this section was held a mere irregularity and that all trustees were elected and entitled to hold for at least one year. *State ex rel v. Thomas*, 150 Wis. 190.

Cities of first class; officers. SECTION 925—22. Officers of cities of the first class shall be a mayor, two aldermen from each ward, constituting a common council, a treasurer, comptroller, attorney, clerk, engineer, tax commissioner, an assessor for each ward, a board of public works, a school board, a board of commissioners of the public debt, a board of health, one or more city physicians, a chief of police, a chief engineer of the fire department, one or more harbor masters where required, a supervisor for each ward, a justice of the peace and one constable for each ward, policemen, bridge tenders, firemen, street commissioners and such other officers as the council shall from time to time deem necessary.

This section was amended by Chap. 327, 1917, and a referendum held thereunder in the City of Milwaukee by substituting 25 ward aldermen and fixing the term of office at four years. See note to section 925—23, pages 9 and 10.

Officers of cities—second, third and fourth class. SECTION 925—23. The officers of cities of the second, third and fourth classes shall be a mayor, treasurer, clerk, comptroller, attorney, assessor or one or more assessors, three or more justices of the peace, one or more constables as the common council may determine by ordinance, a physician, street commissioner, chief of the fire department, a board of public works, a board of school commissioners, one or more policemen, two aldermen and one supervisor from each ward, and such other officers or boards as the common council may deem necessary; provided, that the council, by a two-thirds vote, may dispense with the offices of street commissioner, engineer, comptroller and board of public works, and provide that the duties thereof be performed by other officers or boards, by the council or a committee thereof. In case the whole number of justices of the peace provided for by this act shall not have been elected the mayor of such city may appoint the remaining number of justices who shall hold their offices until the first of May following the next succeeding judicial election.

The common council may create such minor offices as it may deem necessary to promote trade and commerce at any time, and fix the salaries for the incumbents. *State vs. Kelley*, 154 Wis. 482.

A person who was an alien when elected to office may yet hold it if otherwise qualified and his disability is removed before the commencement of his term. The same rule applies to a minor, or one who had

not resided one year in the state when elected. *State v. Murray*, 28 Wis. 96. *State v. Trumpf*, 50 Wis. 103. *State v. Marcus*, 160 Wis. 354, 391.

City officers; methods of choosing. SECTION 925—25. 1. The mayor, treasurer, comptroller, aldermen, justices of the peace and supervisors shall be elected by the people. The other officers shall be elected or otherwise selected as provided by ordinance approved by the electors of the city; provided, that in case any such officer, except policemen, shall be appointed by the mayor, such appointment shall be subject to confirmation by the council. In cities where the clerk performs the duties of comptroller, the clerk shall be elected by the people.

Elections under general charter. 2. In all cities operating under the general law, officers, except as herein specified, shall continue to be elected or appointed in the manner now provided by law. In cities adopting the general law all officers shall continue to be elected or appointed in the manner prevailing in such cities at the time of the adoption of the general law, until changed in the manner herein provided, except as herein otherwise provided.

Change of method by initiative and referendum. 3. Upon petition of fifteen per centum of the electors voting at the last preceding election the council shall submit the question of changing the manner of election of any city official to the method specified in such petition except as to those officials enumerated in section 1 of this act who are to be elected by the people. Thereafter such officers shall be elected or appointed in the manner determined by the electors at such election.

Cities of fourth class; optional. 4. In cities of the fourth class the clerk and other officers, may be elected by the electors at the same time and in the same manner as other officers are elected, upon a petition asking therefor being filed in the office of the city clerk fifteen days prior to any regular municipal election, signed by thirty per cent of the electors of such city who voted at the last general election then next preceding as appears from the poll list.

Notice of election when petitioners determine. 5. It shall be the duty of the council and the proper officers of any city of the fourth class to give notice of, call for and order the election at the next election and thereafter at each succeeding election, the officer or officers whose title of office is specified in such petition.

Petitioners may choose either method; exceptions. 6. Such petition may include one or more or all of the officers of such city, and the notice of and the order for the election shall follow and include the officer or officers named in the petition, and upon like petition, signed by a majority of the electors asking therefor, any common council, of any city of the fourth class by ordinance duly passed may provide for the appointment by the mayor with the concurrence of the council of any

officers of such city excepting the office of mayor, aldermen, treasurer, supervisor or justice of the peace.

In cities of the fourth class operating under special charter the common council may by three-fourths vote determine the number of assessors for such city. See section 926—146, page 29.

TERMS OF OFFICE AND COMPENSATION.

Town officers, term of. SECTION 60.22 (811). Every town officer elected at an annual town meeting, except as provided in section 60.19 and excepting justices of the peace, shall hold his office for one year, and until his successor is elected and qualified.

Section 811 renumbered by Chap. 551, 1919.

A town treasurer appointed pursuant to section 818 is "elected" within the meaning of that word in section 811, which provides that every town officer shall hold his office "until his successor is *elected* and qualified." *State ex rel. Schommer v. Vandenberg*, 164 Wis. 628.

Village officers; terms. SECTION 61.23 (878). * * * The term of office of all village officers, except trustees and justice of the peace, shall be one year and until their respective successors are elected or appointed and qualify. If any officer be absent or temporarily incapacitated from any cause the board may appoint some person to discharge his duties until he returns or until such disability is removed.

Section 878 renumbered, revised and amended by Chap. 691, 1919.

Terms of office in certain cities. SECTION 925—26a. 1. In cities of the second, third and fourth classes, the terms of office of all city officers hereafter chosen by the electors, except aldermen of cities governed by special charter, shall be two years; and also except supervisors, who shall be elected annually, and their term of office shall be for one year, unless otherwise provided for in cities operating under special charters, or unless the common council shall by ordinance provide a different term for said officers, or any of them.

Exception. 2. This act shall not affect the term of office of any city officer which exceeds two years.

Aldermen. 3. The common council may, by ordinance adopted and published at any time previous to the publication of notice of the election at which aldermen are to be elected, provide for the division of the aldermen into two classes, one class to be elected for two years, and the other for four years and thereafter the term of office of all such aldermen shall be four years. All ordinances adopted under the authority herein granted shall be deemed adopted, only upon the affirmative vote of two-thirds of the members-elect of the council, which vote shall be recorded.

It is customary for officers to begin their terms at noon of the day fixed by statute and such custom has the force of law. *State vs. Byrne*, 98 Wis. 16.

Cities of first class; terms of office. SECTION 925—22d. 1. In all cities of the first class, however incorporated, the mayor, treasurer and comptroller shall be elected the first Tuesday in April for a period of four years, beginning April, 1920. The officials so elected shall enter upon the duties of their respective offices on the third Tuesday in April in the year of their election, and shall hold their respective offices for the term of four years and until their successors shall be elected and qualified.

2. The clerk of all such cities, however incorporated, shall be elected by the common council of such city for a period of four years, beginning April, 1920. Ch. 231, 1919.

3. The term of office of the city attorney of all cities of the first class, however incorporated, shall be two years. Said term of office shall begin in the year 1922 and shall terminate in the year 1924. The city attorney of all such cities of the first class shall be elected for said term of two years at the regular municipal election in any such city to be held on the first Tuesday in April, 1922. From and after the year 1924 the term of office of said city attorney shall be four years, and said city attorney shall be elected at the regular municipal election in any such city to be held on the first Tuesday in April, 1924. Ch. 505, 1919.

Chapter 327, 1917, provided for a referendum vote on the question of the number and term of office of aldermen to be elected in cities of the first class. A referendum held pursuant to said act in the City of Milwaukee resulted in the adoption of question No. 6, abolishing aldermen at large and providing that the common council should "consist of 25 ward aldermen only elected every four years." It appears, therefore, that the term of all officers of the city of Milwaukee is now four years, except city attorney, whose next term will be two years. But commencing in 1924 the term will be restored to four years. The object of this act was to bring the election of city attorney at the same time as the general municipal election for other city officers.

Town assessors; compensation. SECTION 60.61 (851). Town assessors shall be paid such compensation for their services as may be allowed them by the town board, not exceeding ten dollars per day in all towns in counties having a population of one hundred and fifty thousand inhabitants or upwards, and not less than three nor more than five dollars per day in other towns.

Section 851 amended and renumbered by Chaps. 60 and 551, 1919, so as to authorize town boards to increase the compensation of assessors from three to five dollars per day except in Milwaukee County, where town boards are authorized to pay assessors not exceeding ten dollars per day.

Like compensation is prescribed for village assessors by section 882 of the statutes, except in villages in Milwaukee County, where the maximum compensation is limited to five dollars per day. Pages 12, 13.

Village assessors' duties. SECTION 882. In all villages the assessor shall take and file the official oath. He shall begin on the first day of May, or as soon thereafter as practicable, to make an assessment of all

of the property in his village liable to taxation on that day, in the manner prescribed by law. He shall return his assessment roll to the village clerk at the same time and in the same manner in which town assessors are required to do. His compensation shall be fixed by the village board at a sum not less than three dollars per day, except in counties having a population of one hundred and fifty thousand or more, in which his compensation shall be fixed by the village board at a sum not exceeding five dollars per day.

Amended by Chap. 691, 1919.

Cities, first class; assessors' salaries. SECTION 926—146m. In all cities of the first class the salaries of assessors shall be twelve hundred dollars per year.

An act allowing an officer whose salary cannot be increased or decreased during his term a sum of money to enable him to employ clerks without requiring him to employ any, is void. *Rooney vs. Milwaukee*, 40 Wis. 23.

Salaries cannot be fixed by contract but are incidents to the office. The incumbent has the same right to the salary as to the office and an agreement to take less than the salary is not binding on the officer. *Nelson vs. Superior*, 109 Wis. 618.

An ordinance creating a new office subsequent to the time prescribed for fixing salaries may nevertheless fix the salary of the office so created. *State vs. Kotecki*, 155 Wis. 66.

Salary and fees for collection of taxes. SECTION 840. 1. Every town treasurer shall receive as compensation for his services, including collection of taxes, the salary provided for in section 821.

2. The treasurer of each incorporated village shall receive as compensation for his services, including collection of taxes, a salary to be fixed by the village board at its last regular meeting preceding the annual charter election.

3. The treasurer of every city of the second, third and fourth class incorporated under special charter shall receive as compensation for his services, including collection of taxes, a salary to be fixed by the common council at its last regular meeting preceding the annual charter election.

4. When collection is made by distress and sale of goods by any town, city or village treasurer, he shall receive the fees allowed by law to constables for levy and sale of goods upon execution. The compensation so fixed shall be in lieu of all fees except one dollar for making return of delinquent taxes and six cents for each mile traveled one way to deliver the same, to be paid by the county treasurer on settlement, and shall remain the salary of the treasurer until changed in like manner by the proper town or village board or common council.

This section provides for the compensation of all town, city and village treasurers, except in cities of the first class, on a salary basis. Local treasurers are not entitled to any other or additional compensation than the prescribed salary, except as specified in subdivision 4, however inadequate such salaries may be or however much their duties may increase. Officers take their offices *cum onere* and services re-

quired of them by law for which they are not specifically paid must be considered compensated by the fees allowed for other services. *Fernekes vs. Milwaukee Co.*, 43 Wis. 303; *McCumber vs. Waukesha Co.*, 91 Wis. 442.

Town treasurers; salaries. SECTION 821. It shall be the duty of such board of audit:

5. To fix the salary of the town treasurer to be elected at the next town meeting, which salary shall be in lieu of all fees, and shall remain the salary of the treasurer until changed in like manner at some future annual meeting.

Section 820 of the statutes authorizes the town board "to audit and settle all charges against the town," and this section among other things defines the duties of the town board when acting as a board of audit. Claims can be allowed only for such purposes as the town is authorized to levy taxes and spend money and then only when itemized and verified in the manner prescribed by section 823. Claims allowed or orders issued in disregard of these provisions are void. *Mueller vs. Cavour*, 107 Wis. 599; *Menasha Wooden Ware Co. vs. Town of Winter*, 159 Wis. 437; *Land and Lumber Co. vs. McIntyre*, 100 Wis. 245; *Quayle vs. Bayfield Co.*, 114 Wis. 108.

Salary and fees of treasurer. SECTION 925—152. The city treasurer shall receive as compensation for his services, including collection of taxes, a salary to be fixed by ordinance in accordance with section 925—30 of the statutes. In case of a distress and sale made by him of goods or chattels for the payment of any taxes he shall receive such fees as are allowed to constables for similar services. The city treasurer shall keep in a book to be provided for that purpose true accounts of all fees by him received as treasurer from any source, and such book shall be open for inspection at all reasonable times, and he shall have on file and make return to the council, duly certified on oath, an itemized statement of all fees or other moneys received and paid out by him as treasurer.

TAX LEVIES AND LIMITATIONS.

Powers of town meeting. SECTION 60.18 (776). The qualified electors of each town shall have power at any annual town meeting by vote:

(1) RAISING MONEY; LIMITATIONS. To raise money for the repair and building of roads or bridges, or either; for the support of the poor and defraying all other charges and expenses of the town, not exceeding in the aggregate, exclusive of taxes for schools and liabilities theretofore lawfully incurred and not including income taxes in the treasury, one per centum of the assessed valuation of such town for the preceding year as equalized by the town board of review; except that an additional sum not exceeding one-fourth of one per centum of said valuation may be raised for the repair of highways and bridges; and a further additional sum not exceeding two per centum of said valuation

may be raised for school purposes when under the township system of school government.

(7) BONDS FOR BRIDGES AND ROADS. (a) To authorize the town board to issue and negotiate in the manner provided by law bonds of the towns for amounts and purposes specified and limited as follows:

First. Not exceeding five thousand dollars in the aggregate for the purpose of defraying the expenses of building any bridge over any stream in such town when the cost thereof will exceed the sum of two thousand dollars;

Second. Not exceeding ten thousand dollars in the aggregate for the purpose of defraying the expenses of building roads;

Third. Any sum not exceeding the constitutional limitation of the town's indebtedness for the purpose of defraying the expense of building roads when the town is located in a county containing a city of the first or second class.

(b) Such bonds may be made payable with interest at different times but the maturity of bridge bonds shall not exceed ten years and the maturity of road bonds shall not exceed twenty years from the date thereof. The power conferred by subsection (5) and this subsection shall not be exercised at any such town meeting unless the town board shall have given notice of its intention to present the proposition to such meeting as is required in the case of special town meetings, nor unless the resolution or order to be voted upon containing the particulars specified by section 60.63 shall be first publicly read to such meeting before the vote thereon shall be taken, nor shall any action be taken under this subsection unless seventy-five per cent of the electors present at such meeting vote in favor of the resolution or order.

Amended by Chap. 702, 1919.

That portion of the foregoing section limiting the amount of taxes to be levied for town purposes should be read in connection with section 1240 post. Taken together they would seem to limit the amount of taxes that may be levied in rural towns for highway purposes to a maximum of one and one-fourth per cent of the assessed valuation of the preceding year in all cases and to an aggregate levy of $2,000 in towns having less than 500 inhabitants and $3,000 in towns having a greater population, and comprising two townships. But this limitation does not apply to highway taxes authorized by sections 1317*m*—1 to 1317*m*—15.

Village boards to levy taxes. SECTION 893 (892). The village board shall have power, by ordinance, resolution, law or vote:

(25) To levy and provide for the collection of taxes and assessments, audit claims and demands against the village and direct orders to issue therefor in the manner prescribed in this act; to refund any tax or special assessment paid or any part thereof, when satisfied that the same was unjust or illegal; to authorize bonds of a village to be issued in the cases provided by law, and generally to manage the financial concerns of the village; and they shall cause to be prepared and read at each annual charter election a true, detailed and itemized statement by them of the finances of the village, showing the amount in the

treasury at the commencement of the year, when and from what sources all moneys paid into the treasury during the preceding year were derived, and the whole amount thereof, and when, to whom and for what purpose all money paid from the treasury during the same period was paid, and the whole amount thereof, with the balance then in the treasury, which statement shall be recorded in the minute book and filed and preserved in the clerk's office.

All property taxable; poll tax abolished. SECTION 925—136. All property in the city subject to taxation under these statutes, shall be subject to taxation for all purposes authorized by this chapter.

This section was amended by Chapter 443 of the Laws of 1919 by striking out the provision authorizing common councils to provide for the levy and collection of poll taxes.

Agricultural lands within the city are taxable by the same rule as other city property. *Weeks vs. Milwaukee*, 10 Wis. 242. *Janesville vs. Markoe*, 18 Wis. 368.

The statute which provided for the annexment of lands to a city was held void because it authorized the assessment of agricultural lands so annexed at a different rate from that of other city property. *Slawson vs. Racine*, 13 Wis. 398.

City levy; limitation. SECTION 925—142a. The common council shall have the power to levy annually such sum or sums of money as may be sufficient for the several purposes for which taxes are authorized to be levied and to apportion the same into such funds for city or ward purposes as they may provide by ordinance or resolution; provided, a tax levied for any one year for municipal purposes, together with the tax required to be levied for state, county, county school and school district purposes, and for delinquent taxes for the preceding year, shall not exceed three and one half per cent of the assessed value of the real and personal property in the city in that year.

The limitation of tax rate prescribed by this section applies to cities operating under the general charter law only. The maximum tax rate in cities operating under special charters is governed by the provisions therein contained. For limit of tax rate in counties, towns and villages see sections 776, 914 and 1074. Pp. 14, 15, 23, 100, 101.

School districts; levy of school taxes. SECTION 40.09. The inhabitants of any school district qualified by law to vote at a school district meeting when assembled at the first and at each annual meeting in their district or at any adjournment thereof in their district shall have power:

(5) To vote such tax as the meeting shall deem sufficient to purchase or lease a suitable site for a school house, to build, hire or purchase a schoolhouse and to keep in repair and furnish the same with the necessary fuel and appendages.

(6) To vote such tax as the meeting shall deem proper for the payment of teachers' wages in the district.

(7) (a) To authorize and direct the sale of any schoolhouse, site or

other property belonging to the district when the same shall be no longer needed for the use of the district.

(b) To levy a tax for the purpose of paying to any surety or bonding company the fee or consideration necessary to secure a bond indemnifying the district against any loss of moneys belonging to the district in the hands of the school district treasurer.

(a) To impose such a tax as may be necessary to discharge any debts or liabilities of the district lawfully incurred.

(9) To vote a tax not exceeding seventy-five dollars in any one year for the purchase of maps, blackboards and school apparatus.

(10) To vote a tax not exceeding one hundred dollars in any one year for a district library, consisting of such books as they may direct their district board, at a district meeting, to purchase, said books to be selected under the advice of the state superintendent; provided, that any school district having less than two hundred children of school age shall not vote a tax exceeding fifty dollars in any one year for such library; and that no district containing a population of less than two hundred and fifty inhabitants shall have power to levy and collect a tax of more than five hundred dollars in any one year for any purpose other than for the purposes prescribed in the fifth subdivision of this section, and for the payment of the principal and interest of any loan due the state.

Limit of tax rate for schools. (10a) The total amount of school district tax hereafter levied in any school district in this state in any one year for building, hiring or purchasing any school building, and for the maintenance of schools, including teachers' wages and incidental expenses, shall not exceed two per cent of the total assessed valuation of taxable property in such school district for the preceding year.

(18) At the annual meeting only, to vote a tax to compensate the treasurer and director, which in districts supporting graded or high schools shall be such sums as may be voted, and in other districts maintaining only one school not more than ten nor less than five dollars to each of the above officers, and in districts maintaining more than one school in separate buildings five dollars for each separate additional school maintained in a separate building, provided the buildings are at least a mile and a half apart, the distance to be measured by the nearest traveled highway.

School districts in cities and towns—joint. SECTION 40.015. All school districts heretofore or hereafter organized, composed of territory from any incorporated city or village, however organized, together with territory adjoining said village or city, shall constitute a joint school district, and all the school property thereof shall be vested in said joint school district.

All taxes for sites, buildings and maintenance of the schools on said joint school district shall be uniform throughout said joint school district and shall be levied and assessed in accordance with law.

The provisions of subsections (1) and (2) supersede the existing law only insofar as it is inconsistent herewith.

Created by Chap. 612, 1919.

Clerk's certificate. Under sec. 1, ch. 81, 1869, a certificate of a clerk which merely stated "that, at the annual school meeting, voted to raise three hundred dollars for teachers' salaries, in building a woodshed, and all incidental expenses during the year," was not sufficient to confer authority to levy the tax: *Arnold v. Supervisors*, 43 Wis. 627.

The failure of the clerk to file the statement required goes to the ground-work of the tax, and might be set up as a defense to an action under sec. 35, ch. 22, 1859, without making the deposit required by sec. 38 of that chapter: *Powell v. Supervisors*, 46 Wis. 210.

School district taxes; assessment and collection. SECTION 832*n*. 1. All school district taxes, unless otherwise specially provided by law, shall be assessed on the same kinds of property as taxes for town and county purposes; and all personal property which, on account of its location or the residence of its owner, is taxable in the town shall, if such locality or residence be in the school district, be likewise taxable for school district purposes.

Valuation of realty. 2. Whenever any real estate in any school district shall not have been separately valued in the assessment roll of the town, and the valuation of such real estate cannot be definitely ascertained from such assessment roll, the town clerk shall estimate the value of the same in proportion to the valuation affixed in said assessment roll to the whole tract of which such lot or piece of land forms a part.

3. The town clerk shall assess the taxes so certified upon the property liable thereto, placing the same in a separate column in the next tax roll of his town, whenever so certified, before he shall have delivered the roll to the town treasurer for collection, although after the third Monday of November; if any such tax shall not be assessed in the next tax roll after being voted it shall be assessed in that of the next succeeding year. Such taxes shall be collected or returned delinquent by the town treasurer and collected by the county treasurer in all respects like other taxes.

Duties of Assessors. SECTION 925—137. The assessor or assessors elected or appointed under this chapter shall, within the time and in the manner prescribed by law for making the assessment of property for taxation under these statutes, make an accurate assessment of all property in the city subject to taxation; provided, that in cities of the first class the tax commissioner shall perform such duties in relation to the assessment of property for taxation as may be prescribed by the council; and provided further, that the assessment roll for the entire city or the roll for each ward of the city shall be made as the council may direct.

For detailed discussion of the powers and duties of assessors see Sections 1030 to 1060 of the statutes and notes and decisions pertaining thereto. Pp. 32 to 83 Post.

Reports of assessments to county clerks. SECTION 1004. The clerk of each town and city, and of each village which collects its taxes independently of the town, and the town clerk of each town in which any village is situated, the taxes for which village are collected by the town treasurer, shall annually, at the time he is required by law to deliver the tax roll to the town, city or village treasurer, make out and transmit to the county clerk, on blanks furnished by the secretary of state, a statement showing the assessed valuation of all property within his town, city or village, and separately the amount of all taxes levied therein by said town, city or village, including school district, highway, street and sidewalk taxes for the current year and the purposes for which the same were levied; also a complete and detailed statement of the bonded and other indebtedness of his town, city or village, and of the accrued interest, if any, remaining unpaid, and the purposes for which said indebtedness was incurred.

Report of taxes levied to tax commission. SECTION 1004a. Annually, on or before the third Monday of December, a statement in detail of all taxes levied in each town, village and city during the year, shall be made and filed by the clerk thereof, with the state tax commission. Any such clerk failing to make the statement herein provided for, and within the time above provided, shall be liable to his town, village and city for all damages caused by his delinquency. The tax commission shall prepare and furnish the blanks for such statement, as well as for the statement mentioned in section 1005.

The information furnished under this section is used in determining the average tax rate on the general property of the state applicable to railroad and other public service companies under section 51.14, Statutes.

Returns to tax commission. SECTION 1005. The county clerk of each county shall, immediately upon the receipt from the tax commission of the blanks and instructions necessary for carrying out the provisions of section 1004*a*, by town, village and city officers, distribute the same to such officers at the expense of the county, and shall annually, on or before the thirty-first day of December, make out and transmit to the tax commission, on blanks furnished by it a tabular statement of the statistics of valuation, taxes and indebtedness reported by the town, city and village clerks; and also, separately, the assessed valuation of all the taxable property in his county as last fixed by the county board, a statement in detail of all county taxes levied thereon during the preceding year, and the purposes for which the same were levied and expended; and also a detailed statement of the bonded and other indebtedness of his county, of the accrued interest thereon, if any, remaining unpaid, and the purposes for which such indebtedness was incurred. Any county clerk failing to make the statement herein provided for, within the time above provided, shall be liable to his county for all damages caused by his delinquency.

Forms for the reports called for by this section have been prepared by the tax commission for the use of the county clerks. The information furnished thereby is principally used for statistical and accounting purposes.

Tax commission to collect sales' statistics. SECTION 1007. It shall be the duty of the tax commission to collect from time to time statistics of recorded sales of real estate in each county and of the assessed valuation of the lands included in such sales. In collecting such statistics, sales appearing to be made for a nominal consideration or as to which the true consideration is not stated and cannot be readily ascertained, and those in which the description of lands does not substantially correspond or cannot be identified with descriptions upon the assessment roll, shall be omitted; and the commission may also exclude from such statistics any other sales where for any reason the data appear to be unreliable or not serviceable.

In former years the tax commission employed field agents to collect information relating to the sales of real estate. That service is now performed by assessors of income in their respective districts. Memoranda of all transfers of real estate are obtained from records in the Register of Deed's office and transcribed on cards. They are then verified in the field, tabulated and preserved in the office of the tax commission. When the consideration actually paid cannot be obtained, or the transfer is a trade or between relatives or otherwise fails to represent a normal or bona fide transaction the sale is rejected. The number of representative sales actually used for statistical purposes is less than half the total number of transfers. For a full discussion of the use of sales for valuation purposes, see Tax Commission Report 1914, pp. 39 to 42.

Sales statistics; items for collector. SECTION 1008. The data to be collected as provided by section 1007 shall include:

(1) The date of each instrument of conveyance or sale;

(2) The date, volume and page of the record thereof;

(3) A brief description of the lands conveyed or sold;

(4) The number of acres, where the lands are unplatted;

(5) The consideration recited in such instrument;

(6) The assessed valuation next previous or nearest to the date of such instrument.

(7) Such other facts as the commission may deem material.

Sales' statistics to be compiled. SECTION 1009. The statistics for each year shall be compiled by assessment districts and by counties in tabular form, and the compilations shall be filed and carefully preserved in the office of the tax commission for use in the performance of its duties. An abstract or copy of such compilations of so much as is used by the commission in arriving at the true value for each county shall be furnished to the county clerk of such county in each year as soon as practicable after the same shall be completed for such year. The county clerk shall cause same to be laid before the county board at its next annual meeting.

Crop statistics. SECTION 1010. 1. It shall be the duty of the assessor of each village, city, town or county, at the time of making the annual assessment of property, to collect such statistics in relation to the principal farm products and agricultural resources as may be required by the department of agriculture. Such tabulation of statistics shall be forwarded to the department of agriculture on the date of the meeting of the town board of review, but not later than July 15th; and a summary thereof, in duplicate, shall be delivered at the same time to the town clerk, one of said duplicates to be forwarded without delay to the county clerk.

2. The department of agriculture shall prepare and furnish to the proper officers such blanks and instructions as may be necessary for carrying out the provisions of this section.

Defective classes; statistics of. SECTION 1014. Each assessor shall when making the annual assessment for the year one thousand nine hundred and five and for every tenth year thereafter, ascertain and enter upon a blank prepared for that purpose and furnished by the state board of control the name and surname in full of each deaf and dumb, blind, insane and idiotic person in his assessment district, the age, color, sex, occupation and place of birth of such persons, whether such persons are educated or not, the names in full of their parents, the number of children of such parents, and what the relation of blood, if any existed, between such parents, and the number of deaf and dumb, blind, insane and idiotic children of such parents, and return the same to the county clerk at the time of completing the assessment roll for said assessment district. The county clerk shall, on or before the first day of September in said years, transmit the same to the state board of control, who shall compile and tabulate such returns and include a summary statement thereof in its report for said years.

Returns may be sent for; expense. SECTION 1015. If any town, city or village clerk shall have failed or neglected to transmit to the county clerk the statement required by section 1004, or if any assessor shall have failed or neglected to return the complete schedule of the deaf and dumb, blind, insane and idiotic persons, as required by section 1014, or to make and file with the county clerk the certificate required by section 1010, for ten days after the time he is required by law to transmit or make the same, the county clerk shall in either case send a messenger to such clerk or assessor who has so failed or neglected to procure the same, and such messenger shall be entitled to receive three dollars per day and ten cents per mile for each mile necessarily traveled in the discharge of his duty, to be paid out of the county treasury on the order of the chairman of the county board and county clerk. The amount so paid shall be charged to the proper town, city or village and added to and collected with the next county tax apportioned thereto. The county clerk shall, immediately after having sent any such messenger, notify the treasurer of the proper town, city or village of the amount of the expense so incurred and such treasurer shall

deduct such amount from the compensation of such delinquent clerk or assessor.

Statement of indebtedness to secretary of state. SECTION 1017. Each county, city, village, town and school district clerk shall, whenever required by the secretary of state, furnish to him a full and complete statement showing the bonded and all other indebtedness of his respective county, city, village, town or school district, the purposes for which the same was incurred and all accrued interest, if any, remaining unpaid.

Penalty for failure to report statistics. SECTION 1019. Every clerk of any town, city, village or school district and every assessor who shall fail or neglect to perform any duty required of him by any of the provisions of this chapter shall, for every such neglect or failure, forfeit not less than twenty nor more than fifty dollars, and it shall be the duty of the county clerk to cause every such forfeiture to be prosecuted for. Every county clerk and register of deeds who shall fail or neglect to perform any duty required of him by this chapter shall, for every such neglect or failure, forfeit not less than twenty-five nor more than one hundred dollars; and it shall be the duty of the department with which such returns are required to be filed to cause every such forfeiture to be prosecuted for.

Dog license; assessor to list dogs. SECTION 1624. 1. Every assessor shall annually and prior to the first day of July ascertain by diligent inquiry the dogs owned, harbored or kept within his assessment district. Every person shall answer frankly and fully all questions which shall be put to him by such assessor relative to the ownership or keeping of dogs within the assessor's district. The assessor shall prepare a list containing the names and addresses of all owners of dogs in his district, the number and sex of dogs owned, harbored or kept. Such list shall be in duplicate and shall be filed with the town, village or city clerk of the district before the thirtieth day of June in each year. Said clerk shall immediately file one of said lists in his office and deliver the other to the department of agriculture. The assessor shall receive as compensation therefor the sum of twenty cents for each dog listed by him to be audited and allowed by the county board as other claims against the county, but to be paid solely out of the dog license fund.

2. Every town, village or city clerk shall keep a card index arranged alphabetically according to the surnames of dog owners, which index shall be kept to date and the cards thereof shall contain such data as shall be prescribed or required by the department of agriculture.

3. A license shall be issued by the clerk upon application being made therefor and upon payments made as herein provided. Such license shall be in the form prescribed by the department of agriculture and shall be executed by the proper town, village or city clerk. The license shall state the date of its expiration, shall bear a serial num-

ber, the owner's name and address, and the name, sex, breed and color of the dog licensed.

License fee not a tax. Sections 1623 to 1630 inclusive were created by chapter 527 of the Laws of 1919. This act provides for the licensing of all dogs over six months of age, and the payment of an annual license fee of three (3) dollars for each male dog and five (5) dollars for each female dog. The license provided for is imposed under the police power of the state, primarily for the protection of sheep and other domestic animals, and is not a tax in the strict sense. The administration of the law is vested in the Department of Agriculture, and in due course the necessary forms and instructions will be issued by that department. But section 1624 above quoted requires assessors to prepare lists of all dogs in their respective districts with the names and addresses of owners or persons by whom kept, and to file the same with the clerk thereof before the 30th of June each year. The fee prescribed for assessors for preparing and filing such lists is probably additional to their regular compensation as fixed by the town, city and village boards.

Tax limit in villages. SECTION 914. The village board shall, on or before the fifteenth day of October in each year, by resolution to be entered of record, determine the amount of corporation taxes to be levied and assessed on the taxable property in such village for the current year, which shall not exceed in any one year two per centum of the assessed valuation of such property. Before levying any tax for any specified purpose, exceeding one per centum of the assessed valuation aforesaid, the village board shall, and in all other cases may in its discretion, submit the question of levying the same to the village electors at any general or special election by giving ten days' notice thereof prior to such election by publication in a newspaper published in the village, if any, and if there be none, then by posting notices in three public places in said village, setting forth in such notices the object and purposes for which such taxes are to be raised and the amount of the proposed tax.

CHAPTER II

ASSESSMENT AND COLLECTION OF TAXES IN CITIES UNDER GENERAL CHARTER LAW

Cities of first class; return and examination of rolls. SECTION 925—138. When the assessment roll or rolls shall have been completed in cities of the first class the same shall be delivered to the tax commissioner, and in all other cities to the city clerk, who shall thereupon give notice by publication in the official paper of the city for ten days that on a certain day or days therein named said assessment roll or rolls will be open for examination by the taxable inhabitants, which said notice may assign a day or days certain for each ward, where there are separate assessment rolls for such wards, for the inspection of such rolls. On such examination the tax commissioner, assessor or assessors may make such changes as may be necessary to perfect the assessment roll or rolls, and after the corrections are made the said roll or rolls shall be submitted by the tax commissioner or city clerk to the board of review.

A taxpayer, who prior to the meeting of the board of review examines the assessment roll, has the right to assume that the assessor will not change it thereafter, and he cannot be required to search the books again to ascertain the correctness of the entries and the computation made in extending the tax on the roll. *State ex rel. Pabst Brewing Co. v. Kotecki*, 163 Wis. 101 and 104.

So held, where two items appearing upon the roll as personal property when the taxpayer examined the same after delivery to the clerk but before submission to the board of review, one of which was afterwards transferred to the real estate column by the assessor. Idem.

Boards of review, cities under general law. SECTION 925—139. 1. In cities of the first class, the mayor, clerk, tax commissioner and assessor or assessors shall constitute a board of review, and in all other cities the mayor, city clerk and such other officer or officers, other than assessors, as the common council shall, by ordinance, determine shall constitute a board of review.

Salary. 2. In all cities except those of the first class the common council, shall, by ordinance, fix the salaries of the members of the board of review.

See note to section 1060, page 84.

Meeting of. SECTION 925—140. The board of review shall meet on the first Monday of July of each year and proceed as prescribed by these statutes.

Delivery of rolls. SECTION 925—141. When the roll or rolls shall have been examined and completed by the board of review the assessor or assessors shall deliver the same, as completed and verified as required by these statutes, together with all statements of valuations, to the city clerk, who shall preserve the same in his office.

For date when the assessment roll as corrected by the board of review shall be delivered to the town, city or village clerks, see section 1064 and notes, pages 92, 93.

Board of public works; estimates of expenses. SECTION 925—142. On or before the first day of October in each year the board of public works, if there be one, shall file with the city clerk a detailed statement of the amount of money that will be required for the ensuing fiscal year in such department; and the city comptroller or the officer performing his duties shall likewise file a statement of the amount required by the police and fire departments, the general and library fund, and for the purpose of paying interest for the ensuing year on the public debt and five per cent of the principal thereof. The city clerk shall place such estimates before the council at its next regular meeting, and the council shall thereupon, by resolution, levy such sums of money as may be sufficient for the several purposes for which taxes are authorized, not exceeding the amount provided by section 925—142a. And in making such levy they shall take into consideration the estimated amount that will be received by the city during the fiscal year from licenses or from any other source.

Effect of estimates. Under a section quite like this it has been held that the estimates required are merely aids to the judgment of the council, not limitations on its general power, and that the levy of a certain sum for the "general fund" is not invalid because it was not included in the estimates filed, nor because there was no detailed statement of the items of which it was made up. And under a provision like sec. 925—153, though the levy was void, equity would not set aside a sale of land based thereon and for other taxes without payment as a condition of relief, it not appearing that the tax levied in pursuance thereof was excessive or unequal: *Hayes v. Douglas Co.*, 92 Wis. 429.

Tax roll and warrant in cities; apportionment; school tax. SECTION 925—143. It shall be the duty of the city clerk to make out a complete tax roll in the manner and form provided by law, and as soon as practicable after the levy shall have been made by the council as prescribed in the preceding section, and the certificate of the county clerk showing the amount of state and county taxes apportioned to the city shall have been received, to cause the same to be extended upon such tax roll upon a uniform percentage by setting opposite the description of each lot, tract or parcel of land, and to the name of each

person named in said roll, in proper columns, such proportionate share of the sums of taxes so levied as may be chargeable upon such lot, tract or parcel of land or against such person, and also enter and extend upon such tax roll all special assessments required to be entered thereon. To such tax roll shall be appended a warrant signed by the mayor and clerk, substantially in the following form:

Tax warrant in cities.

To —— ——, city treasurer of the city of ——:

You are hereby required to collect from each of the persons and corporations named in the annexed tax roll, and from the owners or occupants named of the real estate described therein, the taxes set down in such roll, opposite to their respective names, and to the several parcels of land therein described; and in case any person or corporation upon whom any such sum or tax is imposed shall refuse or neglect to pay the same you are to levy and collect the same by distress and sale of the goods and chattels of the person or corporation so taxed, and out of the moneys so to be collected, after deducting your fees, you are first to pay to the treasurer of said county, on or before the second Monday of February next, the sum of —— for state taxes, you are to retain and pay out as city treasurer according to law the sum of ——, and the balance of said moneys you are required to pay to said treasurer for county purposes on or before the fifteenth day of March next by which day you are further required to make return to said treasurer of this warrant with said roll annexed, together with your doings thereon as required by law.

Dated the ——— day of ———, 19—. ——— ———, Mayor.

—— ——, Clerk.

And in cities where the school district system is in force the city clerk shall, upon the receipt by him of the statement or statements of the amount of school tax apportioned to the part of the district or districts respectively within such city, extend the same upon the tax roll and apportion the same as required by law. And in such cities the warrant for the collection of taxes shall, in addition to the other aforesaid directions, therein require the city treasurer to pay out according to law, from the money so collected by him, to the person or persons lawfully entitled thereto the amount of the district school tax collected by him thereunder.

See note to section 1081, page 110.

Evidence, roll and warrant as. SECTION 925—144. The tax roll and warrant thereto attached shall be prima facie evidence in all courts that the property therein described and persons therein named were subject to taxation and to the special assessments therein entered, and that the assessment was just and equal, and the same shall be delivered to the city treasurer on or before the fifteenth day of December in each year.

Taxes, cancellation of in cities. SECTION 925—145. After the tax roll shall have been thus delivered to the treasurer it shall not be lawful for the council to remit, annul or cancel any tax specified therein except in the following cases:

1. When a clerical error has been made in the description of the property or in the extension of the tax.
2. When improvements on lots were considered in making the assessment roll, where the improvements did not exist at the time fixed by law for making the assessment.
3. When the property is exempt by law from taxation.
4. When a person has been assessed the same year for the same property in more than one ward or place.

Special assessments, how carried out. SECTION 925—146. All special assessments shall be carried out on the tax roll in a separate column or columns opposite the lots or tracts upon which the same may be a lien, and the treasurer shall have the same authority with reference thereto as if the amount of such lien was a general tax.

The proceeds of special assessments belong to the holders of the certificates issued to pay for the improvement for which the assessment was made. Whether collected by the local or county treasurer they should be preserved as a trust fund to pay the holders of the improvement certificates. For that reason they are required to be entered separately on the roll, and in case of non-payment returned separately to the county treasurer and separately sold by him unless redeemed. In case of delinquent return special assessments should not be credited to the district returning the same nor charged to the county. They remain throughout the property of the improvement certificate holders. See sections 926—135 to 926—138; *State ex rel. Donnelly vs. Hobe*, 106 Wis. 411.

Treasurer's notice to taxpayer. SECTION 925—147. On the receipt of such tax roll the treasurer shall give one week's notice thereof in the official paper; such notice shall specify that the taxes must be paid on or before the thirty-first day of January following.

See section 1090 authorizing the common council of cities of the second, third or fourth class by two-thirds vote to extend the time for the payment of taxes without penalty until the first day of March. Page 132.

Collection of taxes. SECTION 925—148. On the expiration of the time specified the treasurer shall proceed to enforce the collection of such taxes in the manner provided by law; provided, that in cities of the first class he shall issue his warrant, directed to the chief of police of the city, requiring him, within a time specified therein, to collect such taxes on personal property as shall then remain unpaid, and the chief of police receiving such warrant shall possess all the powers given by law to town treasurers for the collection of such taxes, and be subject to the liabilities and entitled to the same fees as town treasurers in such cases.

Bond of chief of police. SECTION 925—149. Before the treasurer shall sign his warrant to the chief of police such chief of police shall give a bond to the city, in such sum with such sureties as the council may prescribe, for the payment to the city treasurer of all taxes by him collected or received by virtue of such warrant.

Return of tax warrant. SECTION 925—150. Within the time required by these statutes in the case of town treasurers for the return to the county treasurers of the delinquent taxes on personal and real property, the said chief of police, in cities of the first class, shall return his warrant for the collection of taxes of personal property to the treasurer.

Town, city and village treasurers are required to pay the amount of state taxes charged to their respective municipalities on or before the 1st Monday in March each year, and to make returns under their warrants and settle with the county treasurer on the 22nd of March following. See sections 1081 and 1110, Statutes.

Apportionment of taxes; delinquent returns. SECTION 925—151. Out of the taxes collected the treasurer shall first pay the state tax to the county treasurer, and shall then set aside all sums of money levied for school taxes, then moneys levied for the payment of judgments, then all sums raised as special taxes in the order in which they are levied, then taxes for the payment of principal and interest on the public debt, then taxes for bridge purposes, then for fire purposes, then for streets and other public improvements, and lastly county taxes. Delinquent returns shall be made to the county treasurer in all respects as required by the statutes, and thereafter such proceedings shall be had with reference to the delinquent taxes so returned as are provided for in case of delinquent returns from towns.

For corresponding provisions relating to the apportionment of taxes collected by town treasurers see section 837 of the statutes, page 29.

Penalty for nonpayment of taxes. SECTION 925—152a. Taxes not paid before February first shall be subject to a penalty of two per cent on the amount of the tax, which penalty shall be collected by the town, city or village treasurer, and paid into the treasury together with the taxes collected.

See section 1090 of the statutes and note to section 925—147, p. 27.

Provisions directory. SECTION 925—153. The directions herein given for the assessing of lands and personal property and levying and collecting taxes shall be deemed directory only, and no error or informality in the proceedings of any of the officers intrusted with the same, not affecting the substantial justice of the tax, shall vitiate or in anywise affect the validity of such tax or assessment.

A similar provision held to apply only to proceedings had after the debt or liability for which the tax was levied had been lawfully created, and not to affect matters antecedent thereto which went to the

jurisdiction of the council to incur the obligation which the tax was to liquidate: *Johnston v. Oshkosh*, 21 Wis. 184.

A similar clause was given effect to in *Hayes v. Douglas Co.*, 92 Wis. 429. Provisions in sec. 1, ch. 334, 1878, that no omission of the taxing officers should affect the validity of the assessment or tax, held void as an intrusion upon the judicial function: *Plumer v. Supervisors*, 46 Wis. 163. See *Rork v. Smith*, 55 id. 79.

Assessors; cities under special charter. SECTION 926—146. In all cities of the fourth class, incorporated by special act, the common council may, by an ordinance adopted for that purpose, by a three-fourths vote of all the members of the council elect, determine the number of assessors for said city. No such ordinance shall be introduced except at a regular meeting of the council and no action shall be taken thereon before the next regular meeting thereof nor until it shall be published at least once in each week for three successive weeks in the official city paper, if there be one and if there be none, in some newspaper published in the county where the city is located to be designated by the council, together with a notice of the time said ordinance will be considered.

SECTION 926—146n. The council of any city of the third class, however organized, may by resolution require its tax assessors including the present incumbrances to devote their entire time to the duties of their office, and may fix their compensation. This section was created by chapter 662, laws of 1919.

MISCELLANEOUS PROVISIONS.

Order of payment by town treasurer. SECTION 837. If, upon the return of the uncollected taxes to the county treasurer in any year, there shall be a deficiency of cash funds in the town treasury to pay all the charges thereon during such year, then the town treasurer shall set apart in the order specified below a sufficient amount of such funds to pay in full each of such charges so far as such funds will extend; and he shall pay the same only in the order and for the objects herein specified, to wit:

(1) The amount of moneys raised for common school purposes and returned taxes collected for any school district.

(2) The amount raised for the support of the poor.

(3) All moneys raised for highways and bridges and returned taxes collected therefor.

(4) The amount of moneys raised for all other town purposes shall be applied to the payment of all other lawful orders upon the town treasury. The treasurer shall keep a record of all such orders presented for payment, showing the date and order of drawee, and shall indorse thereon the fact and date of such presentation and sign his name thereto, and as said orders are paid note the fact of payment on said record; said orders shall be paid in the order of their presentation as shown by said record when there are funds in the treasury.

Irrespective of special statutory provisions a fund raised by a city for a specific purpose is a trust fund and equity will in a proper case interfere to prevent its diversion.

Moneys raised by taxation for a specific purpose constitute a fund "appropriated by law" for that specific purpose within the meaning of section 925—122 and the council of a city of the third class operating under the general charter law cannot lawfully transfer such fund even temporarily to the general fund or any other city fund. *Weik v. Wausau* 143 Wis. 645.

Taxes of worthy indigents; municipality may pay. SECTION 937c. The council of any city and the board of any town or village may by resolution direct its treasurer to pay any tax legally assessed against the real estate of any worthy, indigent person resident therein.

A copy of such resolution with a statement of the amount and date paid and description of the property, certified by the clerk of the paying municipality may be recorded with the register of deeds of the proper county and the amount shall thereby become a lien upon such real property in favor of the paying municipality prior to any other lien than prior outstanding tax certificates or prior liens hereunder for the amount paid, with legal interest, and shall be enforcible after transfer of title of the property by sale, inheritance or will, in the manner provided by law for the enforcement of mechanic's liens.

Owner or subsequent lien holder may redeem. The owner of such property, his heirs, personal representatives or assigns may discharge such lien at any time by paying the amount of such lien with accrued interest to the treasurer of the proper municipality who shall execute a proper satisfaction piece which may be duly recorded with the said register of deeds.

The holder of any subsequent lien may purchase such lien by payment of the amount thereof with accrued interest to the treasurer of the proper municipality who shall execute a proper assignment thereof to such payor, and on recording such assignment, such assignee shall have the same rights the assignor had.

Created by Chapter 234, Laws of 1919. This section applies to real estate taxes only, and does not include personal property or income taxes. The payment by the municipality is in the nature of an advance of the amount of the taxes to the owner. The lien of the tax is preserved until the amount thereof is repaid or the property redeemed.

Cities of first class; postponement of tax payments. SECTION 959—70*o*. 1. The common council of any city of the first class, whether incorporated under special charter or operating under general law, shall have power to extend the time for the collection of all or a portion of the taxes, assessed for city purposes, for a period of time not exceeding six months under the following conditions:

2. All taxes, the payment of which shall be thus postponed, shall bear interest from the time they would otherwise become delinquent to the date of their payment at such rate as shall be fixed by an ordinance.

which shall be approved by the comptroller or clerk in cities having no comptroller; provided, however, that the rate of interest shall not be less than five per cent per annum, nor more than seven per cent per annum.

3. No such extension of time shall be operative in favor of any taxpayer unless he shall have paid to the city treasurer, before the expiration of the time limited therefor, the full amount of all taxes required to be by him paid for all purposes, exclusive of city purposes.

4. If any taxes, the payment of which shall have been thus postponed, shall not be paid on or before the expiration of the said six months, the city treasurer shall declare the same to be delinquent, and such taxes shall be collected, including accrued interest, together with an additional charge thereon at the rate of twelve per cent per annum from the expiration of the said six months. If any such taxes shall have been levied upon personal property, the same shall be collected forthwith in the manner provided for the collection of delinquent taxes on personal property. If any of such taxes shall have been assessed upon real estate, all tracts or parcels of land upon which the same shall have been assessed, shall be sold in the manner provided for the sale of land for the nonpayment of taxes. The sale of such lands shall be had at the time and place at which lands shall be sold in the year next succeeding, for the nonpayment of taxes.

This section relates to extension of the time for paying taxes levied for city purposes only. Taxes levied for state and county purposes must be paid within the time prescribed by the general law. The City of Milwaukee by ordinance extends the time for payment of city taxes until the 31st day of July, but only a limited number of taxpayers avail themselves of the privilege. The total amount of taxes levied in the City of Milwaukee for the year 1917 was about $15,000,000, including income taxes and special assessments, and of this amount only $625,000 or less than five per cent, was extended. Deferred payments are subject to six per cent interest from the first of February until paid and the city collected $22,000 interest on the $625,000 of 1917 taxes extended.

CHAPTER III

ASSESSMENTS; WHAT PROPERTY TAXABLE

Secs. 1030—1037, inclusive

Valuation of property; assessors in cities and villages; boards of. SECTION 1030. The valuation of property for taxation and the assessment and collection of taxes in all the towns, cities and villages of this state shall be made according to the provisions of this title, unless otherwise specially provided, by the proper officers elected or appointed therein pursuant to law. If no provision be otherwise made therefor there shall be elected at the annual charter election one assessor for each ward of a city or village authorized to assess and collect taxes independently of the town. When there shall be in any town, ward, village or city, constituting a single assessment district more than one assessor, the assessors therein shall, in the discharge of their official duties, act together as an assessment board, and the concurrence of a majority of such board shall be necessary to determine any matter upon which they are required to act. The term assessor as used in this chapter is intended to embrace such board of assessors.

The fundamental requisites of a good assessment are, first, a complete list of all taxable property in the district, and second, a correct valuation of each item. The one is as important as the other, and both are indispensable to the validity of the tax and equal distribution of the burden. A correct valuation of the property listed will not cure inequalities resulting from omissions; neither will a complete list of property cure inequalities in assessment. In either case an increased burden is cast upon those whose property is assessed. It is therefore all important that a complete list of all the taxable property in the district be secured, and that the same be correctly valued.

Assessment. To assess is to fix the value of property for the purpose of taxation. It is the final step in the process of taxation which fixes a definite and enforcible liability upon persons and property for the amount of the tax. 37 Cyc. 987; *Richardson v. Sheldon*, 1 Pinney, 624. Assessment goes to the whole method of imposing taxes. *Prentice v. Ashland Co.*, 56 Wis. 345. But does not cover proceeding to collect a tax after the roll is completed. *Urquhart v. Wescott*, 65 Wis. 135.

The assessment of taxes is a governmental rather than municipal function. *Wallace v. Menasha*, 48 Wis. 79. And must be made in substantial compliance with the statute. *State v. Supervisors*, 3 Wis. 816. Assessors do not act judicially in the sense that their assessments can-

not be questioned in a court of equity. *Lefferts v. Supervisors*, 21 Wis. 688. But their duties are quasi judicial so as to relieve them from personal liability for errors in the performance of their duties.

Assessment districts in Milwaukee; removal of assessors. SECTION 1030*a*. 1. In all cities of the first class, whether organized under general or special charter, the tax commissioner or other head of the taxation department of such city by whatever name he may be known, shall divide such city into sixteen districts for assessment purposes and fix the boundary lines thereof without regard to ward lines, to be approved by the common council, provided, however, that the purpose of determining situs of personal property for assessment and taxation, the boundaries of such districts may be disregarded. Whenever any of such districts shall be enlarged by reason of the annexation of territory to the city, the tax commissioner may, with the approval of the common council, re-district the city or so much thereof as he deems necessary in order to equalize the work of the several assessors, or he may, with the approval of the common council create additional assessment districts. The said tax commissioner shall appoint one assessor for each district who shall be a resident of the district for which he is appointed and hold office in accordance with the civil service laws applicable to such city, except insofar as the same is modified by subsection 2. They shall devote their entire time and attention to the duties of their office and shall not actively engage in any other occupation, pursuit, business or profession. They shall receive an annual salary to be fixed by the common council, payable as salaries of other officers of such city are paid. The term of office of any assessor or assessors in any city to which this law shall be or become applicable shall terminate on the first day of January following the date on which it becomes applicable to such city. If there be a deputy tax commissioner in any such city, he shall receive an annual salary to be fixed by the common council.

Removal of assessors. 2. Every such assessor so appointed as provided in subsection 1 shall be subject to removal from said office only for the causes mentioned in section 1059a and in addition thereto, neglect of duties and incompetency from any cause, drunkenness and intentional insubordination, and then only in the manner provided by subsection 3.

3. Whenever the tax commissioner ascertains or has good reason to believe that any assessor is guilty of any of the causes for removal mentioned in subsection 2, he may immediately suspend such assessor and the tax commissioner shall thereupon within ten days make complaint to the presiding judge of the circuit court for the removal of such assessor and the matters shall be brought on for immediate hearing. The city attorney shall attend and prosecute such proceeding for removal. Unless such complaint is filed by the said tax commissioner within said time, said assessor so suspended shall ipso facto be reinstated without further proceeding. Nothing herein con-

tained, however, shall affect the removal of assessors in the manner and for the causes as provided in section 1059c. Amended by chap. 123, 1919.

Court decisions. Uniformity in the rule of taxation required by the constitution is not violated by diversity in the methods of electing or appointing assessors in the several cities or in the formation of the several boards of review. *State vs. Anderson*, 90 Wis. 550.

The provisions for removal of assessors contained in the last two subdivisions of this section were considered and upheld in the cases of *State ex rel. Hayden vs. Arnold*, 151 Wis. 19, and *State ex rel. Bannen vs. Arnold*, 151 Wis. 38.

Where the tax commissioner of the City of Milwaukee in good faith removed a ward assessor on the ground that he had been convicted and fined by the district court for being drunk and disorderly, the removal was sustained even though the sentence of conviction of the assessor was afterwards set aside on appeal. *State ex rel. Langen vs. Bodden*, 165 Wis. 243.

Functions of board of assessors in Milwaukee. SECTION 1030m. 1. In all cities of the first class whether organized under general or special charter, the several assessors shall deliver their respective assessment rolls to, and file the same with the tax commissioner, or other head of the assessment department of such city, on the last Monday of June in each and every year.

2. Upon receipt of the rolls of the several assessors, together with their valuations and assessments of real and personal property, the said tax commissioner shall thereupon give notice by publication in the official papers of said city, for ten days, that on a certain day therein named for each assessment district, the assessment roll for said assessment district will be open for the examination of the taxable inhabitants thereof, and at the same time the tax commissioner shall call together all of the assessors, and said tax commissioner together with such assessors shall constitute an assessment board.

3. To the end that all valuations throughout the city shall be made on a uniform basis, and before the assessment roll is completed, such board of assessors, under the direction and supervision of the tax commissioner shall compare the valuations so secured, making all necessary corrections and all other just and necessary changes to arrive at the true value of property within the city.

Majority to act. 4. The concurrence of a majority of such board of assessors shall be necessary to determine any matter upon which they are required to act, and it shall not be necessary for said board of assessors to take testimony before making such corrections and changes as mentioned in subsection 3 of this section, and no notice need be given to the owners of the property assessed of any such corrections or changes in the assessment roll which are made prior to the day fixed in the notice mentioned in subsection 2 of this section as the day on which said assessment roll is to be open for examination, but any changes made thereafter and before the assessment roll shall have been delivered to the board of review can only be

made upon notice, as required in subsection 3 of section 1061 of the statutes.

5. The tax commissioner may provide for such committees of the board of assessors, as he may think best, to make investigations and perform such other duties as may be prescribed by the said tax commissioner. The tax commissioner, or other head of the assessment department, shall be chairman of the board of assessors, and he shall appoint the members of the various committees. He shall be ex officio chairman of each of said committees, but may designate any assessor or other officer or employe in his department to act as chairman in his stead, provided, however, that this provision shall not be construed as giving to such officer or employe any vote as a member of the board of assessors.

6. After the assessors shall have once turned over to the tax commissioner their assessment rolls, they shall have no authority, except by act of a majority of the board of assessors, to make any changes whatsoever in their assessment roll.

7. After all corrections and changes shall have been made, the tax commissioner shall submit the corrected assessment rolls to the board of review.

The board of review in the City of Milwaukee consists of the mayor, city clerk, tax commissioner, and all the assessors.

Assessment district. SECTION 1031. The term "assessment district" is used to designate any subdivision of territory, whether the whole or any part of any municipality, in which by law a separate assessment of taxable property is made by an assessor or assessors elected or appointed therefor.

A taxing district is a district throughout which a particular tax or assessment is ratably apportioned and levied upon the inhabitants. *Black Law Dictionary*, Second Edition. The lines of such district are usually, but not necessarily, coincident with those of the minor municipal units of the state. *Keeley vs. Sanders*, 99 U. S. 441.

Jurisdiction. Land must be situated in a regularly organized town or municipality or in territory which has been regularly attached thereto. If not, the taxing officers of the district have no jurisdiction to levy taxes, and the statute of limitations cannot cure the defect. *Smith v. Sherry*, 54 Wis.. 114. Where lands have been treated as part of a town for nearly twenty years, and the public has acquiesced in the action of the county board attaching them thereto, it is too late to question the jurisdiction of the town over such lands, although there exist irregularities which would have been fatal to such action if proceedings had been taken promptly to avoid it. *Sherry v. Gilmore*, 58 Wis. 324. *Bardon v. Land & River Improvement Co.*, 157 U. S. 327.

Blanks for officers. SECTION 1032. The tax commission shall prescribe and furnish to the several county clerks, forms for the assessment rolls, tax rolls, blanks and returns required for the due execution of the provisions of this chapter. Every county clerk shall, at the expense of the county, annually procure to be prepared according to such

prescribed forms and furnish to each assessor in the county, in due season for use, an assessment roll, and to each town clerk a tax roll, and all other books, blanks and papers necessary to be used by such assessors, town and village clerks and treasurers, in the discharge of their duties under this chapter.

Prior to the amendment of 1911, the Secretary of State was required to prescribe and furnish forms for assessment and tax rolls and blank returns to the several county clerks. The section as amended by Chapter 262 of that year requires the tax commission to prepare and furnish all forms relating to taxation used by town, city and village officers. Accordingly the tax commission has prepared forms for assessment and tax rolls, and for reports and returns to county clerks. Forms for assessment and tax rolls have been provided both for a single year and for a four year period. By using the latter form the necessity of copying all the descriptions in the assessment district each year is avoided. Space is left at the foot of each page for the insertion of additional descriptions in case of subdivisions of any of the descriptions on the original roll. Either form of roll can be obtained from the regular dealers at the option of local authorities.

Assessment, when made. SECTION 1033. The assessor of each assessment district shall begin on the first day of May in each year, or as soon thereafter as practicable, and proceed to make an assessment of all the real and personal property liable to taxation in such district. All personal property shall be assessed as of the first day of May in such year except as provided in section 1040. Real property may be assessed at any time between the first day of May and the time of the sitting of the board of review for such district.

Validity. Under the foregoing section all personal property is required to be assessed as of the first day of May, except as otherwise prescribed by Section 1040 of the statutes. This does not mean that the actual view and valuation must be made on the first day of May, as that would manifestly be impossible in most districts. The statute in this respect is directory. The actual assessment may be made at any time during the assessment season. *State v. Zillman*, 121 Wis. 472.

The assessment when made is governed by the ownership, location and condition of the property existing on May first. "No change of location or sale of any personal property after the first day of May in any year shall affect the assessment made in such year." Section 1040 of the statutes.

Real property, when assessed. By the terms of the statute, real estate may be assessed at any time between the first day of May and the sitting of the board of review for such district. This provision is also directory, according to the rule in the Zillman case, supra, and the assessor may continue his duties after the time fixed by law for the meeting of the board of review in order to complete the assessment. Under this section it was held that lands which cease to be exempt from taxation on the eleventh of May were properly assessed for that year, and that it was immaterial whether they had been placed on the roll before or after that date. *Wis. Cent. R. R. Co. v. Lincoln Co.*, 57 Wis. 137.

Under the decision of the supreme court in the case of *Wausau Investment Co.*, 163 Wis. 283, the first Monday in August, when the completed assessment roll is required to be delivered to the clerk for filing,

is the date for determining whether property is exempt or taxable. If property previously held by an exempt owner is transferred to a taxable owner before that date, it is taxable for the year but if transferred after that date it is exempt. The same rule applies when an exemption of given property is created or revoked by the legislature. The status and ownership of the property on the first Monday in August of any given year is the test of taxability or exemption.

All property. SECTION 1034. Taxes shall be levied upon all property in this state except such as is exempted therefrom. All swamp and overflowed lands which have been or may be contracted for sale by any county board or commissioners pursuant to law shall be assessed and taxes thereon collected as in other cases.

The above is the most important section of the statutes relating to taxation. It is at once the charter of the assessor's authority and the measure of his power to assess property. It imperatively requires that "Taxes shall be levied upon all property in this state except such as is exempted therefrom." Failure to comply with its requirements is attended by serious consequences. Thus it has been held that intentional omission from the roll of property liable to taxation invalidates all taxes levied in the assessment district, whatever may have been the motive of the assessor in omitting it. This rule was applied in the case of a vacant lot owned by a religious association which the assessor believed to be exempt. *Green Bay & Mississippi Canal Co. v. Outagamie Co.*, 76 Wis. 587; see *Smith v. Smith*, 19 Wis. 615; *Johnson v. Oshkosh*, 65 Wis. 473.

The foregoing decisions were rendered before the adoption of section 1059 of the statutes, authorizing the assessment in subsequent years of property previously omitted from the roll, and sections 1087—45 to 1087—57, authorizing reassessments. In view of these remedial provisions it is not believed that the unintentional omission of taxable property would defeat an entire assessment. But the importance of placing all taxable property on the roll still remains, because failure to do so operates to cast the burden which the omitted property would bear upon that which is actually assessed and thus produces inequality.

Double taxation. Assessors are cautioned to be on guard against the claim of exemption on the ground of double taxation on the theory that the same property has been assessed in another form or to some other person. In the case of the *Second Ward Savings Bank v. Milwaukee*, 94 Wis. 587, it was held that "in order to render taxation double the same person or a known subject of taxation must be required to contribute twice directly to the same burden while other subjects of taxation are required to contribute but once." More broadly stated, the rule seems to be that double taxation means the taxation of the same property to the same person in the same jurisdiction twice in the same year. The fact that any given property is taxed in another state does not prevent its taxation in this state. The interest of a corporation and that of its stockholders are distinct and both interests may be taxed unless expressly exempted.

Abstract books. Abstract books are subject to taxation as property. *Leon Land Co. v. Equalization Board* (Iowa-, 53 N. W. 94; *Booth Abstract Co. v. Phelps* (Washington), 36 Pac. 489.

Property in this state. Under former statutes moneys and credits secured by mortgages on land in another state in the hands of an agent in that state to be loaned, collected and reloaned but belonging

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to a resident of this state were held to be "property in this state" and taxable here. *State v. Gaylord*, 73 Wis. 316. But this class of property is now exempt under section 2 of chapter 658, laws of 1911.

Definition of real estate. SECTION 1035. The terms "real property," "real estate" and "land," when used in this title, shall include not only the land itself but all buildings, including buildings on leased land and all fixtures, improvements thereon and rights and privileges appertaining thereto, and also private railroads and bridges. Chap. 244, 1919.

Amended by Chap. 463, 1917, and Chap. 244, 1919, by adding the words "including buildings on leased land" and the words "also private railroads and bridges." The object of the amendment was to require buildings on leased land and private railroads and bridges to be assessed as real estate and thus prevent the taxes paid thereon from being used as an offset to income taxes. For method of assessing buildings on leased land see Sec. 1043 and note. p. 60.

Rights and privileges to be included. All rights and privileges connected with and belonging to any given description of real estate, such as water privileges, mineral rights, easements, and special franchises should be valued in connection with and as part of the land to which they attach. Sec. 1052, 37 Cyc. 1072, *Spensely v. Valentine*, 34 Wis. 154; *Smith v. Ford*, 48 Wis. 115, 163. An easement appurtenant to land like the right to draw water on certain lots is properly assessed in connection therewith. The fact that the lots are unimproved and no race is constructed to or upon them is immaterial. *Spensely v. Valentine*, supra. It seems that such an easement cannot be assessed separately from the dominant tenement. *Smith v. Ford*, supra.

Riparian rights. In assessing riparian lands adjacent to an undeveloped water power the value of the water privilege of each parcel should be added to its value as land; and such water privilege value should be arrived at by determining the relation it bears to the value of all the water privileges considered as a unit. *Bradley Co. v. Rock Falls*, 166 Wis. 9.

Permanent improvements for the development of a water power extending into two or more assessment districts such as dams and power houses should each be assessed in the district where located. Where a dam or bridge is constructed across a stream constituting the boundary line between assessment districts the portion of the structure extending to the center of the stream should be assessed in the district in which located. *Union Water Power Plant v. Auburn*, 37 L. R. A. 651; *Pingree v. County Commissioners*, 102 Mass. 76. *Amoskeag Company v. Concord*, 66 N. H. 562.

Fixtures. The supreme court has repeatedly held that machinery and similar property located and used in connection with a building are to be considered as fixtures, (1) when actually annexed to the realty; (2) when adapted to the use or purpose to which the realty is devoted, and (3) when such property has been placed in the building with the intention of making it a permanent accession to the freehold. The latter is the controlling consideration. *Rinzel v. Stump*, 110 Wis. 287; *Barrington v. Evenson*, 127 Wis. 36; *State ex rel. Gisholt M. Co. v. Norsman*, 168 Wis. 442.

The case last cited is the most recent and illuminating decision of the supreme court on the assessment of fixtures, and it was there held that "machinery adapted to the purposes of a manufacturing plant

becomes when installed therein and connected with the building by wires or belts a part of the freehold, and the land, buildings, and machinery so attached constitute an entity, and pass by deed, mortgage, or other conveyance of the land."

The machinery assessed as fixtures in that case ranged from very small machines to those weighing thirty to forty thousand pounds all adapted to the purposes of the plant. For the most part they were held in position by their own weight and were neither bolted nor screwed to the floor but were all attached either to electric motors by wires or to the steam power plant by belts and pulleys. All parts of the concrete floor were of sufficient strength to support the weight of the heaviest machines which were occasionally moved from place to place in the factory to suit the varying convenience and necessity of the plant. They were all assessed as fixtures constituting part of the realty under this section and the assessment was approved by the supreme court.

Private railroads. This section as amended requires private railroads to be asesssed as real estate. Where the right of way is owned in common with the land through which it extends the entire value of the railroad property should be determined as a unit and the proportionate part of such value added to the value of each district. But when the right of way is leased from a third party or held under easement separate and apart from the land, the value of the railroad property should first be determined as a unit including therein the value of such leasehold or easement, and assessed to the railroad company. The land should then be separately assessed to the owner thereof subject to such leasehold or easement interest.

Definition of personal property. Section 1036. The term "personal property," as used in this title, shall be construed to mean and include toll bridges, saw logs, timber and lumber, either upon land or afloat; steamboats, ships and other vessels, whether at shore or abroad; ferry boats, including the franchise for running the same; ice cut and stored for use, sale or shipment; and all goods, wares, merchandise, chattels, and effects, of any nature or description, having any real or marketable value, and not included in the term "real property," as above defined.

This section was amended by Section 463 of the Laws of 1917 by striking out the words "buildings upon leased lands if such buildings have not been included in the assessment of the land on which they are erected." Buildings of every character, whether held in common with the land on which erected or located on leased lands, should be assessed as real estate under sections 1035 and 1043 of the statutes, except buildings and improvements owned by and used in the operation of public utilities exercising a special franchise and charged with public duties.

Property of public utilities. The real estate of public utility companies operating under a franchise, such as steam and street railways, electric light, water and power companies, used in connection with and reasonably necessary to carry on their business, is drawn to and assessed in connection with the franchise as personal property, and therefore cannot be separately assessed as real estate. *Washburn v. Washburn Water Works Co.* 120 Wis. 575; *State v. Anderson*, 90 Wis. 550; *Monroe Water Works Co. v. Monroe*, 110 Wis. 11. Generally speaking, lands owned by any such company not

necessarily used in connection with its business should be assessed as real estate. In the Washburn case supra it was held: "that all the property of public service corporations such as street and other railway companies, and public lighting companies, whether real, personal or mixed, in the ordinary sense of those terms, including franchises other than the mere right to be a corporation, is one entire indivisible thing; that all the parts partake of the nature of the franchise from which springs the public duty, and as that is deemed to be personalty, all should be regarded as such."

Assessment of dams. Where a flooding dam was built by a quasi public corporation, chartered for the purpose of improving navigation of a river used solely for such purpose or was valuable only in connection with the franchise of the company and essential to the full exercise of the corporate right and franchise, it was held that the value of such dam in connection with this franchise should not be included in the value of the land on which it is built in the assessment of such land for taxation. *Yellow River Impt. Co. v. Wood Co.* 81 Wis. 554.

Waterworks. It was said in *Fond du Lac Water Co. v. Fond du Lac*, 82 Wis. 322, that this section not only requires all property not exempted to be taxed, but requires that the franchises and privileges of a corporation, which are clearly property of the corporation should be taxed. It is not to be implied from this section that the mains, pipes and hydrants, with the rights and franchises of a water company by which alone its works are made valuable and productive, can be assessed by a mere description of the lots on which the pumping works are situated, and this, too, without any reference to the water works in connection with which the lots are used.

Improvements on homestead lands. SECTION 1037. The improvements on all lands situated in this state which shall have been entered under the provisions of the act of congress entitled "An act to secure homesteads to actual settlers on the public domain," approved May twentieth, one thousand eight hundred and sixty-two, and which shall be actually occupied and improved by the person so entering the same or his heirs, shall be subject to taxation, and such improvements shall be assessed as personal property. All taxes levied thereon shall be collected out of the personal property of the occupant of such lands and in no other manner.

The word "improvements" as used in this section includes everything done upon the land which adds to its value such as buildings, clearing, draining, fencing, etc. In this respect it differs from the meaning of the term as used in section 1052 which is confined to buildings and similar structures.

The land itself cannot be assessed until the homesteader has made his final proof and payment, and otherwise complied with the homestead law so as to be entitled to patent. When all conditions of the homestead law have been complied with so as to entitle the entryman to patent, the land itself becomes liable to assessment as real estate the same as if the patent had been received. *Wis. Cent. R. R. Co. v. Price Co.* 64 Wis. 579; same case, 133 U. S. 496; *Farnham v. Sherry*, 71 Wis. 568.

CHAPTER IV

PROPERTY EXEMPT FROM TAXATION

General Explanation

The following section deals with the subject of exemptions and contains the pricipal provisions of the statutes relating thereto. It should be borne in mind, (1) that the exemptions prescribed by this section relate to the property tax only and have no application to income, inheritance occupation or other forms of taxation; (2) that all exemption statutes are to be strictly construed and that only such exemptions can be allowed as are clearly authorized by law. In other words, unless the person claiming the exemption brings himself clearly within the provisions of the statute the exemption should be denied. The supreme court of the United States early adopted the rule that "Exemptions from taxation are regarded as in derogation of the sovereign authority and of common right and therefore cannot be extended beyond the express terms of the language used." *Bailey v. McGuire* 22 Wallace 215; *Phoenix Insurance Co. v. Tenn.* 161 U. S. 174; *Vicksburg v. Dennis* 116 U. S. 668.

The same rule has been adopted by the supreme court of this state. *State ex rel. Bell v. Harshaw*, 76 Wis. 240; *Katzer v. City of Milwaukee*, 104 Wis. 16; *Agr. Assn. v. Douglas Co.*, 104 Wis. 429. In the case of *Katzer v. Milwaukee*, it is said that "statutes exempting property from taxation are to be strictly construed and if the meaning of such a statute is fairly ambiguous or uncertain as to a specific piece of property or owner, it is the duty of the court to resolve the doubt in favor of the taxability of the property." This is the universal rule where the effect of the exemption would be to relieve the property from taxation altogether.

When liberally construed. Where, however, a special method of taxation is prescribed as to any given item or class of property, and in consideration thereof it is exempted from taxation under the general law, a more liberal rule of construction prevails. *Milwaukee E. R. & L. Co. v. Milwaukee*, 95 Wis. 339; *Duluth S. S. & A. Ry. Co. v. Douglas Co.* 103 Wis. 75; *Merrill R. & L. Co. v. Merrill*, 119 Wis. 249. This rule was expressed in the last mentioned case as follows: "Where a statute in terms exempting property from general taxation is only a part of a general statutory scheme substituting a license fee or other impost in lieu of general taxation, such statute is to be construed liberally in favor of the person required to pay taxes in the substituted form." This latter rule applies to street and steam railroads and other similar property not subject to local assessment. As questions under the latter rule will seldom arise, local assessors are cautioned to resolve all doubts in favor of taxability and assess all property which does not come clearly within the terms of the exemptions contained in this section.

The statute is divided into 41 subsections, each dealing with a particular item or class of property, and the comments and explanations bearing on the subject are given under the subdivisions of the statute relating to the same.

Property exempt from taxation; enumeration of. SECTION 1038. The property in this section described is exempt from taxation, to wit:

1. That owned exclusively by the United States or by this state; but no lands contracted to be sold by the state shall be exempt.

(2) Lands owned or occupied free o frental exclusively by any county, city, village, town or school district, or by any free public library; also lands and personal property possessed, managed and controlled exclusively for the public use as park lands or grounds, or for the maintenance of parks, parkways, boulevards or pleasure drives by any city or village. But lands purchased by counties at tax sales shall be exempt only in cases provided in section 1191.

Amended by chap. 558, 1919.

Government lands. The state cannot tax lands while the title remains in the United States nor while it holds them as trustee of the United States. *Tucker v. Ferguson*, 22 Wall. 572; *W. C. R. Co. v. Taylor Co.* 42 Wis. 52. But as soon as the title has passed to a railroad company by its having earned the lands, whether patent has been issued or not, the land becomes subject to taxation. *W. C. R. R. Co. v. Price Co.* 133 U. S. 496; *Farnham v. Sherry*, 71 Wis. 568; *W. C. R. R. Co. v. Comstock*, 71 Wis. 88. A patent is prima facie evidence in respect to the time when the land became taxable. *Eaton v. Lyman*, 33 Wis. 34.

State lands. Lands owned by the state are not subject to taxation but lands conveyed to the state in trust to build railways are taxable after the trust is executed and the title has been vested in the company. Lands granted to this state for the Fox and Wisconsin river improvement did not become subject to taxation on being conditionally granted to the improvement company. *Denniston v. Unknown Owners*, 29 Wis. 351. As to lands mortgaged to the state see *Reynolds v. Weiss*, 27 Wis. 450.

Under a former statute it was held that lands in possession of a city under an option to purchase them, but without any obligation to pay the purchase price, were not exempt from taxation. *Milwaukee v. Milwaukee Co.* 95 Wis. 424.

Wisconsin Orphans' Home. Lands held in trust by the trustees of the Wisconsin Orphans Home "for the benefit of the children" were not owned exclusively by the state within the meaning of this subdivision so as to be exempt from taxation. *Comstock v. Boyle* 144 Wis. 180. Lands owned by one municipality and located within the boundaries of another such as stone quarries, power plants, etc. are exempt under this subdivision.

Municipal bonds. (2m). Any and all bonds issued by any county town, city, village, school district or board of school directors of any town organized under the township system of school government in this state, shall hereafter be exempt from taxation.

See note to subdivision 10 of this section, page 46.

Religious, scientific, literary, educational or benevolent associations. (3) Personal property owned by any religious, scientific, literary, educational or benevolent association, or by fraternal societies, orders, or associations operating under the lodge system, used exclusively for the purposes of such association, and the real property necessary for the location and convenience of the buildings of such association and embracing the same, not exceeding ten acres; provided such real or personal property is not leased or otherwise used for pecuniary profit; and the lands reserved for grounds of a chartered college or university, not exceeding forty acres; and parsonages, whether of local churches or districts, and whether occupied by the pastor permanently or rented for his benefit. The occasional leasing of such buildings for schools, public lectures or concerts, or the leasing of such parsonages, shall not render them liable to taxation. The endowment funds and real and personal estate of any public library association, organized under the laws of this state, which, or the income of which, shall be used or invested for the purposes of such association. The endowment funds and the real and personal estate of any corporation formed solely to encourage the fine arts, organized under the laws of this state, without capital stock, and paying no dividends or pecuniary profits to its members. Such real and personal estate comprised under any endowment or trust, or such proportion of the true value of such real or personal estate, as under the terms of such endowment or trust is specifically held for the benefit of the state historical society of Wisconsin organized under the act of the legislature, approved on the fourth day of March, one thousand eight hundred fifty-three.

Amended by chap. 560, 1919.

This is the most important subdivision of the exemption statute from an administrative standpoint. It was amended by Chapter 554, 1915, by adding "fraternal societies, orders or associations operating under the lodge system," and by Chapter 560, 1919, by adding the last sentence relating to exemption of property held in trust for the benefit of the State Historical Society. The effect of the amendment of 1915 was to establish the character of fraternal societies as charitable or benevolent associations, and thus entitle them to exemption subject to the conditions imposed on the other associations enumerated. These conditions are (1) that the association claiming the exemption is religious, scientific, educational or benevolent in fact; (2) that such association is the owner of the property claimed to be exempt except in the case of parsonages; (3) that the property is necessary for the convenience and used exclusively for the purposes of such association and (4) that such property is not used for pecuniary profit except through occasional leasing of the building thereon for schools, public lectures or concerts. All these conditions must exist to entitle such association to the exemption. If one of them is lacking the exemption cannot be allowed.

Church property. In the case of a vacant lot owned by a religious association in the city of Appleton the exemption was denied notwithstanding that a church building had been erected thereon between the time of assessment and the commencement of the action. It was intimated, however, that if the society had already commenced to build on such lot and the building was in progress of

completion it might be exempt. *Green Bay & Miss. Canal Co. v. Outagamie Co.*, 76 Wis. 587.

In the case of *Katzer v. City of Milwaukee*, 104 Wis. 16, it was held that land conveyed to an archbishop of the Roman Catholic Church by deed running to him as an individual was not exempt from taxation although it was shown that the land had been purchased by the diocese as a residence for the archbishop; that it was actually occupied by him and that it was customary in such cases to take title in the name of the archbishop individually in trust for the diocese. These two cases establish the law that neither ownership without use nor use without ownership is sufficient to secure the exemption. Both ownership and use must concur.

A corporation organized under ch. 86, Stats., for benevolent and educational purposes, even though organized by a religious order of the same name as the corporation and incidentally conducting religious services in a hospital maintained by it, is not a "religious corporation." It seems that the term "religious corporation" means a corporation organized in connection with a church under ch. 91, Stats. *U. S. Natl. Bank v. The Poor Handmaids*, 148 Wis. 613.

Parsonages. A different construction was given to the clause relating to parsonages. In the case of *Gray v. Lafayette Co.* 65 Wis. 567, it was held that the word "rented" as used in this subdivision applied to a residence owned by a layman and rented to a church association as lessee for the use of its pastor, and that the word "leasing" applied to parsonages owned by the church and leased to other persons.

Benevolent associations. In case of *St. Joseph's Hospital v. Ashland Co.* 92 Wis. 636, it was held that property used for hospital purposes owned by sisters of a religious order organized without capital stock and paying no dividends or pecuniary profit to the individual members, in which destitute patients were received without charge, was exempt from taxation as a benevolent association, notwithstanding that a charge was made against patients who were able to pay, the proceeds after paying expenses being loaned without interest to build other hospitals or similar property.

On the authority of this and similar cases in other jurisdictions it is believed that property owned by Young Men's Christian Associations, Salvation Army posts and like organizations used exclusively for the purposes of such organization and not conducted for pecuniary profit come within the exemption. *Commonwealth v. Y. M. C. A.*, 116 Ky. 711; *Auburn v. Y. M. C. A.*, 86 Main 244, 37 Cyc. 945.

Educational Associations. The property of all educational associations to the extent prescribed by the statute is exempt from taxation when exclusively used for the purpose of such association and not conducted for pecuniary profit. While the authorities are not uniform on the subject the general rule is that the exemption extends to buildings erected by colleges or academies on their lands as residences for instructors. *Harvard College v. Cambridge Assessors* 175 Mass. 145; *Ramsay County v. McAllister College* v. St. 46 Iowa 275. The exemption does not extend to commercial colleges and other similar institutions conducted for pecuniary profit.

Agricultural societies. (4) Personal property owned and used exclusively by the state or any county agricultural society, and the lands owned and used by any such society exclusively for fairgrounds

The exemption conferred by this subdivision is limited to property owned and used exclusively by agricultural societies. Lands occupied by county agricultural societies as lessee are not entitled to the exemption: *Agricultural Society v. Douglas Co.* 104 Wis. 429.

Fire companies. (5) Fire engines and other implements used for extinguishing fires, owned or used by any organized fire company, and the buildings and necessary ground connected therewith owned by such company, and used exclusively for its proper purposes.

Indians. (6) The property of Indians who are not citizens, except lands held by them by purchase.

It will be observed that the exemption granted by subdivision 6 is limited to Indians who are not citizens and is confined to lands acquired by purchase.. Property owned by Indians who have severed their tribal relation and are citizens of the United States is subject to taxation. Sec. 12 of Chapter 5 of the Statutes defines three classes of Indians who are citizens: (1) Persons of Indian blood who have been declared citizens of the United States by act of Congress; (2) civilized persons of Indian descent not members of any tribe; (3) civilized descendents of Indian tribes residing in this state outside of reservations who have relinquished all tribal relations and receive no aid from the United States. Neither property belonging to Indians within a reservation nor property which the government of the United States holds in trust for Indians or over which it exercises guardianship is taxable under state law. *Farrington v. Wilson*, 29 Wis. 383; *U. S. v. Rickard*, 188 U. S. 432; *Wisconsin v. Hitchcock*, 201 U. S. 202.

Under the Dawes Act Indians become citizens when they have received their allotments of land. *In re Heff*, 197 U. S. 488; *U. S. v. Thurston Co.*, 143 Federal 287.

Cemetery associations. (7) Lands owned by any cemetery association used exclusively as public burial grounds and tombs and monuments to the dead therein; including lands adjoining such burial grounds, and greenhouses and other buildings and outbuildings thereon, owned and occupied exclusively by such cemetery association for cemetery purposes; all articles of personal property owned by any cemetery association necessarily used in the care and management of such burial grounds, and all funds exclusively devoted to such purposes; all flowers and ornamental plants and shrubs raised for the decoration of such burial grounds, and which may be sold in the manner and for the purposes mentioned in section 1449; also all property held by donation, bequest or in trust for cemetery associations under the provisions of section 1447.

(8) Pensions receivable from the United States.

Under Sec. 776 the electors of a town have power to raise money by taxation for cemetery purposes notwithstanding the provisions of Sec. 1440 devoting to that purpose the proceeds from the sale of land. *Hixon v. Oneida Co.*, 82 Wis. 515.

Corporate stock. (9) Stock in any corporation in this state which is required to pay taxes upon its property in the same manner as individuals.

Moneys, debts due. (10) All moneys, all debts due or to become due to any person, and all stocks and bonds not otherwise specially provided for. Nothing herein shall be construed to exempt from taxation any mortgagee's interest in real estate.

Under subdivision 9 above it was held that a foreign corporation having property and agents, and licensed to do business in Wisconsin was "in the state" within the meaning of the statute, and that stock in such corporation held by a resident of Wisconsin was exempt from taxation. *State ex rel. Trust Co. v. Luech*, 156 Wis. 121. The assessment considered in the above case was made before the adoption of the income tax law and concurrent exemption of "all stocks and bonds not otherwise provided for" prescribed by subdivision 10 following. The broader exemption contained in the latter act impliedly repealed or rendered nugatory subdivisions 9 and 2m preceding. It should be borne in mind, however, that all of these provisions exempting stocks, bonds, and like securities from taxation refer to the property tax only. Interest and dividends from such stocks and bonds, including interest on bonds issued by Wisconsin municipalities, are taxable under the income tax law.

The last sentence of subdivision 10 was inserted to guard against interference with the taxation of mortgagee's interest in real estate under Sections 1042c to 1042i of the Statutes, but as these sections have since been repealed by Chapter 284, 1915, this provision is effectually nullified.

Wearing apparel, furniture, etc. (11) Wearing apparel, including personal ornaments and jewelry habitually worn, family portraits, private libraries, not exceeding in value two hundred dollars, kitchen and other household furniture and furnishings, one piano, organ or melodeon and other musical instruments, and also growing crops, including ginseng, and other medicinal plants.

Personal ornaments, jewelry habitually worn and household furniture and furnishings were added to the exemption by the amendment of 1911. The limitation of household furniture and musical instruments to two hundred dollars in value was stricken out by the same amendment. The words "including ginseng and other medicinal plants" were added by the amendment of 1907. As the subdivision now stands, all wearing apparel, including personal ornaments and jewelry habitually worn, all kitchen and household furniture and furnishings, one watch, one sewing machine, one bicycle and one piano, organ or other musical instrument are exempt without limitation of value.

Miscellaneous property. (11a) (a) The tools of a mechanic kept and used in his trade and farm, orchard and garden machinery implements and tools, actually used in the operation of any farm, orchard or garden.

(b) One bicycle used by the owner in his business or for pleasure, not including any machine propelled in whole or in part by any mechanical agency;

(c) One sewing machine kept for the use of the owner or his family;

(d) Firearms kept for the use of the owner not exceeding in value twenty-five dollars;

(e) Not exceeding five colonies (swarms) of honey bees, kept for the use of the owner and his family;

(f) Poultry not exceeding in value twenty-five dollars;

(g) And all farm animals born after the thirty-first day of December next preceding the day of assessment.

(h) One watch carried by the owner.

(12) Provisions and fuel provided by the head of a family to sustain its members for six months; but no person paying board shall be deemed a member of a family.

Tools and machinery. The limitation of value has also been removed from all tools of a mechanic kept and used in his trade and all farm, orchard and garden machinery and tools actually used in operating the same. All such property is now exempt without limitation of value. Private libraries are exempt to the extent of two hundred dollars in value, but taxable above that point. Libraries of professional men such as physicians, lawyers and architects are considered private libraries within the meaning of this subdivision.

Threshing machines, feed mills, motor engines and portable sawing machines owned by farmers and generally used in threshing or grinding grain or sawing wood for hire are not considered farm machinery and do not fall within the exemption. They should therefore be assessed to the owner under the head of "other personal property." Stationary machines of similar character principally used by the owner on his own farm would seem to be within the exemption, even if occasionally used in doing work for others for hire. See *Cawker v. R. R. Comm.*, 147 Wis. 320.

The exemptions prescribed by subdivisions 11 and 11a supra are confined to the articles enumerated when used for personal or household purposes. All such property is taxable when carried in stock as merchandise or held for sale as commodities. Sec. 1040, pages 54–58.

Insurance companies. (13) All personal property of all insurance companies that now are or shall be organized or doing business in this state.

All insurance companies doing business in this state are required to pay taxes on their gross premiums at the time and in the manner prescribed by Sections 51.31 to 51.344 of the Statutes. Real estate of insurance companies is taxable locally in the same manner as other real estate and the exemption of this personal property and income is in the nature of compensation for the taxes paid by them on gross premiums.

The license fee imposed upon life insurance companies by Sections 51.31 to 51.344 are privilege or occupation taxes; and while not subject to the constitutional provision that the rule of taxation shall be uniform they are subject to the general equality clause of the state constitution and the clause in the fourteenth amendment of the United States Constitution guaranteeing equal protection of the law. *Northwestern Mutual Life Insurance Co. v. State*, 163 Wis. 484.

The license fee method of taxing insurance companies was upheld by the court on the ground that the disparity between the tax so imposed and that which they would bear if taxed upon their income or personal property was not so great that the statute could be called arbitrary or discriminatory, and this decision was affirmed by the United States supreme court. *N. W. Mut. Ins. Co. v. Wis.* 247 U. S. 132.

Railroad, telegraph companies. Subdivision 14, relating to the exemptions of certain railroad property, was repealed by Chapter 692, Laws of 1913 and subdivision 15, relating to the exemption of telegraph

companies, was repealed by Chapter 494, Laws of 1905. The substance of both these subdivisions was consolidated and transferred to Chapter 51 relating to the taxation of public utilities and now appears as section 51.24 of the statutes, which reads as follows:

> "SECTION 51.24. **Exemption from other taxation.** The taxes imposed by this chapter upon the property of the companies defined in section 51.02 shall be in lieu of all other taxes on such property necessarily used in the operation of the business of such companies in this state, except that the same shall be subject to special assessment for local improvements in cities and villages and except the real estate of telegraph companies which shall be subject to local taxation like the property of individuals. The taxes so imposed and paid by such companies shall also be in lieu of all taxes on the shares of stock of such companies owned or held by individuals of this state and such shares of stock in the hands of individuals shall be exempt from further taxation."

Railroads and street railways. Under chapter 51 the tax commission is required to assess the property of all steam and street railways and other state wide public service companies as a unit. The assessment so made covers only the property of such companies as is used or employed in their operation and reasonably necessary to the conduct of their business. This includes the "franchises, rights-of-way, road beds, tracks, stations, terminals, rolling stock, poles, wires, cables, devices, appliances, instruments and equipment" of such companies as a matter of course and "all other real and personal property used or employed in the operation and conduct of the business." The exemption conferred by section 51.24 is limited to so much of such property as is "necessarily used in the operation of the business of such companies in this state."

Public utility, property locally taxable. The only question for local assessors to determine, therefore is whether any given parcel or description of public utility property is in fact used or employed in the operation of its business or reasonably necessary for that purpose. This must be determined according to the principles laid down by the courts from which the following rules are deduced; (1) All property of a railroad or other public utility company used exclusively in carrying on the business of such company is exempt from local taxation. (2) All property of a railroad or other public utility company not used in the operation or conduct of its business is taxable locally like the property of individuals. (3) Property of a railroad or other public utility company which is partly used for utility purposes and partly for other purposes not connected with the operation of the utility or which is intermittently used for both purposes is taxable or exempt according to its principal use. If principally used for railroad or utility purposes, it is exempt from local taxation, but if principally used for private purposes or not used at all it is taxable.

In determining whether any description or parcel of railroad or utility property is subject to local assessment, the law should be liberally construed in favor of the utility company. *Mil. El. Ry. Co. v. Milw.* 95 Wis. 339; *Merrill R. & L. Co. v. Merrill* 119 Wis. 249. The failure to assess property of such companies locally does not operate to exempt it from taxation altogether. If not locally assessed, presumably it will be included in the unit assessment made by the tax commission, and therefore bear its proper proportion of the tax burden. The cases cited in the following paragraphs indicate as clearly as practicable when property of a public service company is subject to local taxation and when exempt therefrom.

Necessary and principal use for railroad purposes. In defining the word "necessarily" as used in this subdivision the supreme court has held that it "does not mean that which is inevitable or absolutely indispensable but that which is requisite or essential as those terms are ordinarily used, or perhaps that which is reasonably necessary for the accomplishment of the purpose intended." *Chicago, St. Paul, etc., Ry. Co. v. Bayfield Co.*, 87 Wis. 188.

Where property is necessarily used as above defined by a railway company in operating its road "it is not required in order to exempt it from local taxation to be used exclusively for railway purposes, but it is sufficient if it is principally used for that purpose." *Chicago & Milwaukee Ry. Co. v. Crawford Co.* 48 Wis. 667. Exclusive devotion of any given property to the carriage of persons or freight by a railroad company is not essential to such exemption but principal devotion thereto will suffice. *Chicago & Milwaukee Ry. Co. v. Douglas Co.* 122 Wis. 273.

"The term 'railroad' fairly includes all structures which are necessary and essential to its operation. A grant of the right to take timber for a railroad includes the right to take it for station houses, depots, machine shops, side tracks, turn outs, water stations, etc." *U. S. v. R. R. Co.* 150 U. S. 3.

"Lots of land necessarily used for repair shops, yards or depot grounds or for the protection of roadbed, gravel pits, etc., if adjoining the track are exempt from local taxation." *St. P. Ry. Co. v. Milwaukee*, 34 Wis. 271.

Land which was leased by street railway company and used by it in the operation of the business is within the provision of this subdivision and is to be considered as owned by such company. *Merrill R. & L. Co. v. Merrill*, 119 Wis. 249.

Special assessments. A statute exempting property from taxation does not exempt it from assessments for special improvements. *Yates v. Milwaukee*, 92 Wis. 352, *1 Cooley on Taxation*, 362. The statutes exempting steam and street railway companies from local taxation expressly provide that "the same shall be subject to special assessments for local improvements in cities and villages." Chap. 425 of the laws of 1903 creating sections 1210 (k) and 1210 (l) of the statutes further provides that the property of "every county, village, town and school district within the state and of every corporation, company or individual operating any railroad, street railway, telegraph, telephone, electric light or power system * * * and of every corporation or company whatever shall be in all respects subject to all special assessments for local improvements in the same manner and to the same extent as to the property of individuals." Under the above act the supreme court held property of a railroad company used for right of way purposes subject to sewer tax in the case of *C. M. & St. P. Ry. Co. v. Janesville*, 137 Wis 7, and in a very recent case, in further construing the statute, held "that lands of a railroad used only for right of way purposes are subject to special assessments for street improvements." *C. M. & St. P. Ry. Co. v. City of Milwaukee*, 148 Wis. 39. It seems to be settled law in this state, therefore, that railroad property is subject to assessment for local improvements in the same manner and to the same extent as the property of individuals.

Milwaukee home for friendless. (16) The real estate of the home of the friendless in the city of Milwaukee, not exceeding one lot in amount, is exempted so long as the same shall continue to be used as such home.

Industrial fairs. (17) All property of any corporation or association formed under the laws of this state for the encouragement of industry by agricultural and industrial fairs and exhibitions which shall be necessary for fair grounds, while used exclusively for such fairs and exhibitions; provided, the quantity of land so exempt shall not exceed eighty acres, and that such corporations or associations may permit such fairgrounds to be used for celebrations or as places of amusement.

Parks, armories and oxide of zinc plants. (19) All land used as a public park or monument ground belonging to any military organization and not used for gain shall be exempt from taxation.

(21) The armory owned by any regiment, battalion or company of the Wisconsin national guard and used for military purposes by such organization; but such property shall be subject to local assessments for the improvement of streets or sidewalks, or for the construction and repair of sewers or drains.

(22) The property of any corporation or association formed under the laws of this state, used exclusively for the purpose of manufacturing oxide of zinc or metallic zinc from native ores of the state, shall be exempt from taxation for a period of three years.

The exemption conferred by this section is confined to property "used exclusively for the purpose of manufacturing oxide of zinc or metallic zinc from native ores of the state." It does not apply to property of such companies acquired or used for other purposes nor to property acquired for the purpose of manufacturing zinc from native ores until such property is actually and exclusively used for that purpose. *D. S. S. & A. R. R. Co. v. Douglas Co.*, 103 Wis. 75.

Turner societies. (23) All of the real and personal property of the turner societies which are or may be incorporated under the laws of this state, which is used exclusively for educational purposes, is hereby exempted from taxation.

Under a statute limiting exemptions to property "used exclusively for" a specified purpose, the fact that the income of the property is devoted to such purpose is not sufficient. The property must be physically used for the purpose for which the exemption is claimed. Thus where portions of the building owned by a turner society were leased for a saloon and barber shop the building was not used exclusively for educational purposes within the meaning of this subdivision, even though the rentals received were used by the society for such purposes. The entire property was held taxable in this case. *Gymnastic Association v. Milwaukee*, 129 Wis. 429.

Mutual savings and building & loan assns. (24) The capital stock, instalments paid in and securities taken for moneys advanced to its own members of any mutual savings fund or loan and building association organized under the laws of this state.

Art galleries. (26) All real and personal property of any public art gallery or of any corporation created without capital stock for the sole purpose of maintaining, regulating and managing a public art gallery in this state shall be exempt from taxation; provided, that the

public shall have access to such art gallery free of charge not less than three days in each week.

Telephone companies. (27) The property of all telephone companies and of persons, associations or corporations engaged in the business of transmitting messages by telephone or the renting, letting or keeping of telephones, wires, batteries or apparatus for that purpose except real estate not exclusively used in carrying on their business.

Telephone companies are taxed upon their gross earnings under the license fee system at the time and in the manner specified by section 51.35 of the statute and are exempted from the general property tax for that reason except as to "real estate not exclusively used in carrying on their business." The exemption of the personal property of a telephone company is absolute, but its real estate is taxable unless exclusively used in carrying on the telephone business. Under the decision in *Gymnastic Association v. Milwaukee*, 129 Wis. 429, it would seem that the renting of rooms in a telephone exchange to private parties or the use of any part of its real estate for other than telephone purposes would defeat the exemption and render the property subject to local assessment.

Cooperative, trust and guaranty companies. (28) The capital stock of mutual co-operative corporations organized under chapter 86.

(31) All the property of trust or annuity corporations organized under chapter 86, except real estate owned by them.

(32) All the property of corporations organized under chapter 86 for the guaranty of title.

Orphans' home. (33) All the real and personal property of any orphan asylum or orphan's home located in the state so long as the same is actually used for such home.

Amended by Chap. 265, 1919.

This subdivision was amended by chap. 265, 1919, by striking out the word "Milwaukee" and extending the exemption to all orphan asylums and by adding "orphans' home located in the state so long as the same is actually used for such home." The effect of the amendment is to extend the exemption to all orphan asylums and orphans' homes in the state as long as used for that purpose.

Beet sugar factories. (34) All factories or plants for the manufacture and refining of beet sugar, and all property, real or personal, used in connection therewith and necessary to the prosecution of the business thereof, for five years from the second day of April, 1897, except that such real property shall be subject to special assessments for local improvements in cities and villages.

It will be observed that the exemption extended to beet sugar factories by this subdivision was limited to five years from the second day of April 1897. As that period has long since expired the property of all beet sugar factories is now taxable in the same manner and to the same extent as the property of other manufacturing concerns.

Plank and toll roads. (35) All the property of every kind actually used in operating any plank or toll road.

Real estate held in trust. (36) No real estate belonging to or held in trust for this state, exempt from taxation by the laws of this state, shall be subject to special taxes or assessments for local improvements, notwithstanding any different or inconsistent provision in any city charter.

Public parks. (37) Any and all lands owned or possessed exclusively for the public use as public parks or grounds by any city or village in this state shall hereafter be exempt from taxation. Any certificate or certificates of sale of such lands for unpaid taxes now or hereafter held by any county board may be canceled by the vote of a major part of the supervisors of such board, in the discretion of such board, and upon application therefor by a city or village having possession of such lands.

Bridge across St. Croix or Mississippi rivers. (38) So much of any bridge across the St. Croix or Mississippi rivers, together with the necessary highways and approaches thereto as lies in this state and is open to the general public for highway purposes, whether toll be charged thereon or not, owned exclusively by any county, city, village or town in this state or in the state of Minnesota, or owned jointly by any county, city, village or town, together with any other county, city, village or town in either of said states, shall be exempt from taxation.

Religious and educational corporations. (39) (a) The lands not exceeding ten acres, together with the buildings thereon, not being within the limits of any incorporated city or village, owned by corporations organized under the laws of this state for moral, religious and educational purposes and used by them exclusively for the holding of annual encampments or assemblies, for moral, religious and educational purposes, are hereby exempted from taxation.

(b) The benefits of this subsection shall cease to be enjoyed by any such corporation if it shall at any time appear that a dividend has been declared on its stock, or that a division of profits has been made, in any manner, among all or any of its members.

(c) The maintenance on such grounds by such corporation of cottages or other structures for the use and accomodations of persons attending such encampments or assemblies shall not deprive such corporation of the exemption privilege hereby granted, but such exemptions shall not extend to buildings on such grounds owned by persons other than such corporation.

See note to subdivision 3, p. 43, supra.

Feeble-minded home. (40) All real property, not exceeding one hundred and twenty acres, and personal property of the Evangelical Lutheran Home for Feeble-Minded, located at Watertown, Wisconsin, so long as said property is actually used and occupied for a home for feeble-minded.

G. A. R halls. (41) All memorial halls owned by the Grand Army of the Republic, or soldiers' memorial associations, duly incorporated under the laws of this state without capital stock and actually occupied by a post of the Grand Army of the Republic, the Women's Relief Corps, or a camp of the Sons of Veterans, which now contain, or shall hereafter have placed therein, memorial tablets in permanent form of marble, brass, bronze, or other suitable material on which are inscribed all the known names of the enlisted men of a given town, city, or county, who died in the service during the civil war, shall be exempt from taxation, and the renting of such halls shall not cause them to be taxed, provided the income from such rentals shall be devoted exclusively to the maintenance of such halls.

Soldiers' memorial buildings. (42) All buildings erected or purchased as memorials to the soldiers, sailors and marines of Wisconsin who served the nation in the great war against Germany and its allies by any county, city, town or village acting through an association or commission incorporated without capital stock under the laws of this state maintained and controlled by commissioners or trustees appointed in accordance with the provisions of section 937e—1. Any such association or corporation may rent said buildings or portions thereof for such public purposes as it sees fit not inconsistent in accordance with the purposes for which said memorials were erected, provided that all income received from the rental of rooms or halls in such building is used in the maintenance of said building.

Created by Chap. 598, 1919.

Community houses. (47) All real and personal property of any community house district organized under the provisions of sections 937f to 937s, inclusive.

Created by Chap. 430, 1919.

Forest tree plantations exempt from taxation. SECTION 28.03. The owner of any tract of land in this state who shall set apart any specific portion thereof, not exceeding forty acres, for forest culture and plant the same with timber or forest trees, not less than one thousand two hundred to the acre, shall be exempted from taxation for the period of thirty years from the time of such planting to timber or forest trees. Such exemption shall only be allowed on condition that said planted trees are kept alive and in a healthy condition. A statement or return of such plantings shall be made to the assessors when makng the annual assessment, which returns shall be verified by the assessors and made the basis of such tax exemption. After said trees have been planted ten years, the owner may, without waiving the tax exemption, thin out the same so that not less than six hundred trees shall be left upon each acre.

Created by Chapter 263, Laws of 1917, Sections 28.04 to 28.13 following prescribe the conditions upon which the exemption is allowed and the steps necessary to secure the same. The exemption relates to trees and timber produced by cultivation only and applies to corporations and partnerships as well as to individuals. Chapter 28 of the statutes should be consulted for further details.

CHAPTER V

TAXABLE PROPERTY, HOW AND WHERE ASSESSED; OCCUPATION TAXES

Sections 1039 to 1059, inclusive.

Real property; where assessed. SECTION 1039. All real property not expressly exempt from taxation shall be entered upon the assessment roll in the assessment district where it lies.

Where the assessment was made by the officers of a town in which the lands were not and never had been situated the deed was void and the statute of limitations did not run in its favor. Wadleigh v. Marathon Co. 59 Wis. 546. Smith vs. Sherry, 54 id. 114.

It may be unwise or even unjust to include agricultural lands within a city or village and impose upon them the additional burdens of such municipalities. But there is no remedy in the courts. The legislature is the sole judge of the matter. *Washburn vs. Oshkosh*, 60 Wis. 453; *Slauson v. Racine*, 13 id. 398; *Janesville v. Markee*, 18 id. 350.

The only exception to the rule prescribed by this statute is in the case of the real estate of public utility companies, which is required to be assessed in connection with the franchise and other property

The property of a public service corporation, like a railway, including its franchise, terminals, and real and personal property, reasonably necessary to be used and in fact used in the performance of its duties to the public is an entirety, and is not to be separated for the purpose of taxation. *Minneapolis, St. P. & S. S. M. R. Co. v. Douglas County*, 159 Wis. 408, 412.

Personal property; where assessed. SECTION 1040. 1. All personal property shall be assessed in the assessment district where the owner resides, except as otherwise provided. If such owners be nonresidents of the state, or foreign associations or corporations, but having an agent residing in this state in charge of such property, then the same shall be assessed in the district where such agent resides; otherwise in the district where the same is located, except as otherwise provided.

2. When personal property held by copartners, joint owners, or owners in common shall, under the foregoing provisions, be required to be assessed in the district in which such owners reside and such copartners, joint or co-owners shall not all reside in the same district, such property shall be assessed in the district in which they shall have their principal office or place of business; and, if there be no such principal office or place of business, then in the district in which such property shall be located.

Where property located. 3. Merchants' goods, wares, commodities kept for sale, tools and machinery, manufacturers' stock, furniture and equipment used in any business, trade or profession, farm implements, cordwood, live stock, and farm products, excepting grain in warehouse, saw logs, timber, railroad ties, lumber and other forest products except as hereinafter provided, shall be assessed in the district where located.

Where mill is located. 4 Saw logs or timber in transit, which are to be sawed or manufactured in any mill within this state, which is owned or leased by the owner of such logs or timber or in which such logs or timber are to be sawed or manufactured by or for the owner thereof, shall be deemed located and shall be assessed in the district in which such mill may be located. Saw logs or timber shall be deemed in transit when the same are being transported either by water or rail or shall have been removed from the district in which the same shall have been cut and shall be banked, decked, piled, or otherwise temporarily placed or stored in some other district for transportation to such mill; but when such logs or timber are banked, decked, piled, or otherwise temporarily placed or stored for transportation in the district in which the same shall have been cut, they shall be deemed located and shall be assessed in such district.

Statement of logs and timber. 5. On or before the twenty-fifth day of June, 1913, and on or before the tenth day of May in each year thereafter, the owner of such logs or timber shall furnish the assessor of the district in which such mill is located and also the assessor of the district in which such logs and timber are located on the first day of May preceding, a verified statement of the amount, character and value thereof, designating the assessment district in which the same are to be sawed or manufactured. Any assessment made in accordance with such statement shall be valid and binding on the owner notwithstanding any subsequent change as to the place where the same may be sawed or manufactured. If the owner of such logs or timber shall fail or refuse to furnish the statement herein provided for or shall intentionally make a false statement, he shall be subject to the penalties prescribed by section 1056*a* of the statutes.

Assessed during April. 6. It shall be the duty of the assessor of the assessment district in which any saw logs, timber, railroad ties, or telegraph poles owned by nonresidents may be located to ascertain at any time during the month of April in each year the amount of such property in his assessment district, by actual view as far as practicable, fix the value of said property, and assess the same to said owners as other personal property is valued and assessed.

Different districts. 7. As between school districts, the location of personal property for taxation shall be determined by the same rules as between assessment districts; provided, that whenever the

owner or occupant shall reside upon any contiguous tracts or parcels of land which shall lie in two or more assessment districts, then the farm implements, live stock, and farm products of such owner or occupant used, kept, or being upon such contiguous tracts or parcels of land, shall be assessed in the assessment district where he resides at the time of such assessment.

Change of location. 8. No change of location or sale of any personal property after the first day of May in any year shall affect the assessment made in such year.

Sawlogs in transit. 9. Any assessment of sawlogs or timber in transit as above defined made under the provisions of chapter 81 of the laws of 1913 shall be deemed as of no effect and superseded by the assessment made of such logs and timber under the provisions of this section. Subsection 3 amended by Chap. 548, 1919.

This section relates exclusively to the place of assessment of personal property and should be read in connection with sections 10.51 and 20.24 —77q of the statutes. Broadly stated the place of assessment of personal property is determined by either the residence of the owner or the location of the property, except in the case of logs and timber in transit. Subdivision 1 requires all personal property to be assessed where the owner resides unless otherwise provided. This is the general rule and should be followed in the absence of express provisions to the contrary. The following subdivisions, however, require nearly all tangible personal property to be assessed where located, and a rule declaring that all tangible personal property shoud be assessed where located except as otherwise provided would more accurately express the scope of the statute.

Scope and construction of section. By grouping the various classes of personal property enumerated according to the principle which determines the place of assessment, its provisions may be summarized as follows: (1) *In the district where located.* All personal property of nonresidents having no agent in this state, merchants' goods, wares, commodities kept for sale, tools and machinery, manufacturers' stock, furniture and equipment used for business purposes, cord wood, livestock, farm products, grain in ware house, when taxable, leaf tobacco, railroad ties, sawlogs and timber (except when intended to be sawed in this state) and other forest products should be assessed in the district where located. (2) Saw logs and timber in transit which are to be sawed or manufactured in this state by or for the owner should be assessed in the district where they are to be sawed or manufactured. (3) All other personal property should be assessed in the district where the owner resides if a resident of the state, but if such owner be a nonresident or foreign corporation and such property is in charge of an agent residing in this state, then the assessment must be made in the district where the agent resides. (4) Shares of stock in state and national banks and trust companies and personal property of co-partnerships, joint owners and owners in common when such owners do not reside in the same district must be assessed in the district where such bank, trust company or principal office or place of business of such corporation is located.

Court decisions. Manufactured lumber, railroad ties, telegraph poles and posts when kept for sale are merchants' goods and must be assessed

where located. *Washburn v. Oshkosh*, 60 Wis. 453; *Eagle River v. Brown*, 85 Wis. 76. Logs owned by non-residents which have been cut, drawn and banked upon a stream to be run and floated down the stream when the water should rise, may be taxed in the state where located unless they have actually been started upon their transportation in a continuous route or journey. After they have so started, temporary delays do not make them taxable at the place of such delay. *Coe v. Earl* 116 U. S. 517. The term "saw logs" does not include lumber, timber, railroad ties, etc. which are merchants' goods, wares and commodities kept for sale. *Mitchell v. Plover* 53 Wis. 548.

Under the act referred to logs which had been cut in one town within six months prior to April 1st and piled there for shipment and which were actually shipped into another town before that date never had a situs in the town where they were so piled but were subject to taxation in the town into which they were shipped. *Day v. Pelican* 94 Wis. 503.

Certain staves were to be delivered at a railway track in a certain city and to be inspected and counted by the vendee. These staves were delivered at such track prior to May 1st but were not inspected and counted until after that date. As the vendee was not to make a selection title passed at time of delivery and they were properly assessed to the vendee. *Allen v. Greenwood*, 147 Wis. 626.

Where a number of posts and poles were cut, inspected and peeled in one county and gradually shipped therefrom, some to a yard in another county and some to purchasers, they were kept for sale within the meaning of this section in the first county and were taxable therein. *Valentine Clark Co. vs. Shawano Co.* 120 Wis. 310.

Logs situated at the principal place of business of the owner thereof upon the first day of May are to be assessed as at such place, unless the intention is to transport the same to some other place in the state to be manufactured into lumber, when they are to be assessed in the place where they are to be manufactured. *State vs. Fisher*, 124 Wis. 271.

Residence. The words "district where the owner resides" refer to and mean the district in which such owner has his legal place of residence or domicile, as distinguished from that which is merely his place of abode for the time being. "Residence is not lost by leaving it for temporary purposes if the intention remains to return after such purpose is accomplished. The general rule is that a man must have a habitation somewhere, that he can have but one, and that in order to lose one he must acquire another. *Kellogg v. Winnebago Co.*, 42 Wis. 97. Residence signifies a permanent home and principal establishment to which whenever he is absent he has the intention of returning." *Miller v. Sovereign Camp W. O. W.* 140 Wis. 508—9.

The statute relating to the residence of electors provides that temporary absence from home with intention of returning shall not deprive a party of his residence, and that neither intention to acquire a new residence without removal, nor removal without intention, shall effect a change of residence. Subdivisions 3 and 9, section 69 of Wisconsin statutes.

Personal property in the hands of an executor or administrator should be assessed at his domicile and not at the domicile of the testator. *Fond du Lac v. Estate of Otto*, 113 Wis. 39.

As to the residence of a corporation for the purpose of taxation, see sec. 1041 post.

Property held by agent may be assessed without naming the agent as such. *Merritt v. Lumber Co.* 75 Wis. 142.

Change of location. The assessment of logs in a town in which they are banked and kept for sale to the person who owns them on May 1st is not affected by their subsequent sale nor by the fact that the pur-

chaser had them listed and assessed to him as a manufacturer in another town. There is no authority in an assessor or board of review to substitute the name of a person who purchases such property after the 1st of May in lieu of the person who owned it on that day. *Eagle River v. Brown*, 85 Wis. 76.

But where logs are manufactured into lumber at the place to which they had been shipped prior to May 1, and on that day the lumber was sold to third parties, the vendor was not liable to assessment therefor. The assessment is to be made after May 1, but in general as of that date. *Day v. Pelican*, 94 Wis. 503.

Ice cut and stored in an ice house is a commodity and is assessable as personal property, in the district where located, under the third sentence of Sec. 1040, Stats., if kept there for sale, even though the owner resides in another district and negotiates sales in that other district, making shipments by rail from the place where the ice is located to purchasers in other parts of this state or in other states, and if not kept for sale, such ice is nevertheless taxable in that district, under the fifth sentence of sec, 1040, stats. State ex rel. *Lake Nebagamon Ice Co. v. McPhee, Village Clerk*, 149 Wis. 76.

Incorporated companies. SECTION 1041. The residence of an incorporated company, for the purposes of the preceding section, shall be held to be in the assessment district where the principal office or place of business of such company shall be.

The franchises and other property, real and personal, of a street railway company are an entirety and must be assessed in the district where its principal office or place of business is. *State v. Anderson*, 90 Wis. 550, 564.

That provision of sec. 1772 which expresses that the articles of incorporation shall state "the name and location" of the corporation does not authorize the fixing the place where the principal office or place of business of the corporation shall be for the purpose of taxation. Where the articles of a corporation which owned and ran a large number of vessels on the great lakes expressed that its principal office should be in the town of Lake, near the city of Milwaukee, and the corporation was named in the articles the "Milwaukee steamship company," the fact that it had an office in that town in which all the meetings of the directors were held did not prevent it from being subject to taxation in Milwaukee, it appearing that all the other business of the corporation was transacted at the office of its president and secretary there, they being insurance and vessel agents in that city. *Milwaukee Steamship Co. v. Milwaukee*, 83 Wis. 590.

Assessment of vessels. SECTION 1042a. 1. That in consideration of an annual payment into the treasury of any town, village or city where such property is assessable by the owner of any steam vessel, barge, boat or other water craft, owned within this state, or hailing from any port thereof, and employed regularly in interstate traffic in the navigation of international waters, of a sum equal to three cents per net ton of the registered tonnage thereof, such payment shall be received in lieu of all taxes, and said steam vessel, barge, boat or other water craft shall be and the same is hereby made exempt from all further taxation, either state or municipal.

2. The owner of any steam vessel, barge, boat or other water craft, hailing from any port of this state, "and so employed in the navigation of international waters," desiring to comply with the terms of this section, shall annually, on or before the first day of May, file with the clerk of such town, village or city a verified statement, in writing, containing the name, port of hail, tonnage and name or owner of such steam vessel, barge, boat or other water craft, and shall thereupon pay into the said treasury of such town, village or city a sum equal to three cents per net ton of the registered tonnage of said vessel, and the treasurer shall thereupon issue his receipt therefor. All vessels, boats or other water craft not regularly employed in interstate traffic in the navigation of international waters, and all private yachts or pleasure boats belonging to inhabitants of this state, whether at home or abroad, shall be taxed as personal property.

International waters. This section affects only steam vessels, barges, boats or other water craft owned within this state or hailing from any port thereof which are "employed regularly in interstate traffic in the navigation of international waters." The term "international waters" is understood to include the Great Lakes but not inland waters nor the Mississippi, St. Croix or St. Louis Rivers.

Interstate traffic. The effect of the section is further limited to steam vessels, barges, boats or other water craft "employed regularly in interstate traffic," which would limit its operation to boats regularly employed in traffic between the ports of this and other states on Lake Superior and Lake Michigan. All pleasure boats and all other water craft plying between different ports of this state and boats used on the rivers and lakes of this state, including the Mississippi, St. Croix and St. Louis Rivers are therefore still taxable under section 1042a, except as modified by sec. 1038, 11a (1).

Payment of tonnage tax. The operation of the statute is further limited to the taxation of boats and vessels the owners of which shall annually on or before the first day of May file with the clerk of the town, village or city in which the same are taxable the verified statement and pay the tonnage tax provided for in paragraph two. If such statement is not filed within the time required boats and vessels engaged in interstate commerce in the navigation of international waters would seem to be subject to taxation as heretofore.

Leaf tobacco. SECTION 1042b. Leaf tobacco, whether in the hands of the grower or dealer, shall be listed and valued by the assessor of the assessment district where the same is located on May first of the year in which the assessment is to be made, and no tobacco then located in this state shall be considered in transit unless it has actually been started on its journey or has been delivered and consigned to a common carrier for shipment. Any assessor who shall knowingly fail to list and value according to law any and all leaf tobacco located in his district on May first of the year of making his assessment shall be punished as provided in section 4550.

TO WHOM TO BE ASSESSED.

Real property. SECTION **1043.** Real property shall be entered in the name of the owner, if known to the assessor, otherwise to the occupant thereof if ascertainable, and otherwise without any name. The person holding the contract or certificate of sale of any real property contracted to be sold by the state, but not conveyed shall be deemed the owner for such purpose. The undivided real estate of any deceased person may be entered to the heirs of such person without designating them by name. The real estate of an incorporated company shall be entered in the same manner as that of an individual. Real property held under lease from any religious, scientific, literary or benevolent association, but otherwise exempt, shall be assessed to the lessee. All buildings on lands under lease or permit, including buildings located on railroad right of way or on other lands not subject to local assessment, shall be assessed as real estate to the owners of such buildings, if known, otherwise as above provided. The tax thereon may be enforced in the same manner as other real estate taxes or by action of debt as prescribed by section 1107*a* for the collection of taxes on personal property.

Amended by chapter 244, 1919, by adding the last two sentences. The effect of the amendment is to transfer buildings on leased land from the personal property to the real estate column and to require such buildings to be assessed to the owner thereof. The land itself should be assessed to the landlord or owner and all buildings thereon owned by a tenant or licensee to the latter as real estate. Machinery installed in a building on leased lands in such a manner as to constitute fixtures, if owned in common with the land, should be assessed in connection with and as part of such building. The tax thereon may be enforced either by tax sale as in the case of other real estate, or by action of debt as in the case of personal property.

It is important that assessors make diligent effort to ascertain the name of the owner or other person to whom real estate should be assessed. If the land is assessed to the owner or occupant, the tax may be enforced by seizure and sale of personal property belonging to such owner, but if the land is not assessed to the owner and is entered upon the roll as "unknown" it is doubtful whether the tax can be collected out of other property.

Court decisions.

The person to whom land is assessed cannot resist payment of taxes thereon upon the ground that he is merely an occupant. *McLean v. Cook*, 23 Wis. 364. The husband who resides with his wife is not the occupant of her separate property. An occupant is one who holds in his own right. *Hamilton v. Fond du Lac*, 25 Wis. 490. But the mistake of the assessor in assessing a homestead occupied by a husband and wife, but owned by the latter, to the husband, is not evidence of bad faith on his part and the tax will not be invalid for that reason. Where the occupancy is ambiguous, there being no buildings, the mistake of the assessor in assessing lots to the owner instead of the occupant will not avoid the tax. *Massing v. Ames*, 37 Wis. 645.

Taxes are properly assessed against one in possession claiming title. *Burchard v. Roberts*, 70 Wis. 111, 118.

Assessing a strip of land as part of a tract owned by another person, instead of separately and to the owner, avoids a tax deed based on such assessment, the action being brought before the statute of limitations had run. *Towne v. Salentine*, 92 Wis. 404.

Property held in charge, assessed to person acting in representative capacity. SECTION 1044. Personal property shall be assessed to the owner thereof, except that when it shall be in charge or possession of some person other than the owner or person beneficially entitled thereto in the capacity of parent, guardian, husband, agent, lessee, occupant, mortgagee, pledgee, executor, administrator, trustee, assignee, receiver, or other representative capacity, it shall be assessed to the person so in charge or possession of the same. Telegraph and telephone poles, posts, railroad ties, lumber and all other manufactured forest products shall be deemed to be in the charge or possession of the person in occupancy or possession of the premises upon whch the same shall be stored or piled, and the same shall be assessed to such person, unless the owner or some other person residing in the same assessment district, shall be actually and actively in charge and possession thereof, in which case it shall be assessed to such resident owner or other person so in actual charge or possession; but nothing contained in this clause shall affect or change the rules prescribed in section 1040 respecting the district in which such property shall be assessed.

To whom assessed. It is very important that personal property be assessed to the proper person as the tax creates no lien thereon, and if charged to the wrong person may not be collectible. The first clause of the section requires personal property to be assessed to the owner thereof and this rule is applicable in all cases where the owner is in possession or where there is no one in charge of the property. But when personal property is in charge or possession of some person other than the owner "as parent, guardian, husband, agent, lessee, occupant, mortgagee, pledgee, executor, administrator, trustee, assignee, receiver or other representative capacity," it should be assessed to the person so in charge or possession, indicating the fact that it is so assessed to him.

Owner or person in charge. This provision was evidently designed for greater security in the collection of personal property taxes. If the owner is known and resides in the assessment district where the property is located, or is readily accessible, the assessment may be made to him as he is ultimately liable for the tax under section 1044b. In all other cases where some person other than the owner or person beneficially interested therein is in charge or possession of the property, in any of the capacities mentioned above, the assessment should be made to such person so in charge or possession. The word "agent" as used in this statute means one who has some legal or contractual relation to the property and has the right to exercise some care or authority over it or perform some duty in respect to it. But "it is not essential that he should be a general agent or that he have authority to act for the owner in respect to it in all matters. The statute makes possession, or the care, custody or management of the property by another, sufficient to sustain the tax." *Merrill v. Champagne Lbr. Co.*, 75 Wis. 142; *State v. Wharton*, 117 Wis. 558.

Special administrator. A special administrator is an administrator within the meaning of section 1044, statutes 1898, requiring personal property in the possession of an administrator to be assessed to him. *Fond du Lac v. Estate of Otto*, 113 Wis. 39.

To the owner. Where personal property was not assessed to its owner but to the former owner, the owner may maintain replevin against the purchaser under the tax sale unless estopped. *Wisconsin Oak Lumber Co. v. Laursen*, 126 Wis. 484.

Assessment, how made; liability and rights of representative. SECTION 1044*a*. When personal property shall be assessed to some person in charge or possession thereof other than the owner or person beneficially entitled thereto as hereinbefore provided, the assessment thereof shall be entered upon the assessment roll separately from the same person's assessment of his own personal property, adding to his name upon such roll words briefly indicating that such assessment is made to him as the person in charge or possession thereof as occupant or possessor of the premises on which such property is stored or piled or as the husband, agent, lessee, occupant, mortgagee, pledgee, executor, administrator, trustee, assignee, receiver or other representative of the owner or person beneficially entitled thereto; but a failure to enter such assessment separately or to indicate the representative capacity or other relationship of the person assessed shall not affect the validity of the assessment.

Personal liability, action, lien. The person so assessed shall be personally liable for the tax thereon. He shall have a personal right of action against the owner or person beneficially entitled to such property for the amount of such taxes and shall have a lien therefor upon such property with the rights and remedies for the preservation and enforcement of such lien provided in sections 3346 and 3347, and shall be entitled to retain possession of such property until the owner or person beneficially entitled thereto shall have paid the tax thereon or shall have reimbursed the person assessed for such tax if paid by him.

Bond to release lien. Such lien and right of possession shall relate back and exist from the time as of which such assessment is made, but may be released and discharged by giving to the person assessed such undertaking or other indemnity as he may accept or by giving to him a bond in such amount and with such sureties as shall be directed and approved by the county judge of the county in which such property is assessed, upon eight days' notice to the person assessed, which bond shall be conditioned to hold and keep the person against whom such assessment is made free and harmless from any and all costs, expense, liability or damage by reason of such assessment.

Sections 1059 and 1044 to 1044b give ample power "to assess property of a decedent omitted from assessment during his lifetime against his personal representatives, and the tax then becomes their debt though with the power to reimburse themselves out of the estate." The tax or liability on personal property is a regular charge against the owner. *Bogue v. Laughlin*, 149 Wis. 271.

Shares of stock in a corporation pledged as collateral security for

the repayment of loans outstanding at the time of their assessment were properly assessed to the pledgee. Th pledgee is the person liable to the municipality for the tax and has his remedy against the pledgor. *Milwaukee v. Wakefield*, 134 Wis. 462.

Actions to collect tax, proceedings in. SECTION 1044b. When personal property shall be assessed to some person in charge or possession thereof, other than the owner, such owner as well as the person so in charge or possession shall be liable for the taxes levied pursuant to such assessment; and the liability of such owner may be enforced in a personal action as for a debt.

In whose name. Such action may be brought in the name of the town, city or village in which such assessment was made, if commenced before the time fixed by law for the return of delinquent taxes, by direction of the treasurer or tax collector of such town, city or village. If commenced after such a return, it shall be brought in the name of the county or other municipality to the treasurer or other officer of which such return shall be made, by direction of such treasurer or other officer. Such action may be brought in any court of this state having jurisdiction of the amount involved and in which jurisdiction may be obtained of the person of such owner or by attachment of the property of such owner.

Attachments; no exemption. The remedy of attachment may be allowed in such action upon filing an affidavit of the officer by whose direction such action shall be brought, showing the assessment of such property in the assessment district, the amount of tax levied pursuant thereto, that the defendant was the owner of such property at the time as of which the assessment thereof was made, and that such tax remains unpaid in whole or in part, and the amount remaining unpaid. The proceedings in such actions and for enforcement of the judgment obtained therein shall be the same as in ordinary actions for debt as near as may be, but no property shall be exempt from attachment or execution issued upon a judgment against the defendant in such action.

Evidence. The assessment and tax rolls in which such assessment and tax shall be entered shall be prima facie evidence of such assessment and tax and of the justice and regularity thereof; and the same, with proof of the ownership of such property by the defendant at the time as of which the assessment was made and of the nonpayment of such tax, shall be sufficient to establish the liability of the defendant.

Irregularity; other remedies. Such liability shall not be affected and such action shall not be defeated by any omission or irregularity in the assessment or tax proceedings not affecting the substantial justice and equity of the tax. The provisions of this section shall not impair or affect the remedies given by other provisions of

law for the collection or enforcement of such tax against the person to whom the property was assessed.

This and the two preceding sections were considered and construed in the case of *Bogue v. Laughlin*, 149 Wis. 271.

Partnership; estates in hands of executor; personal property of, how assessed. SECTION 1044c. The personal property of a partnership may be assessed in the names of the persons composing such partnership, so far as known or in the firm name or title under which the partnership business is conducted, and each partner shall be liable for the taxes levied thereon. Undistributed personal property belonging to the estate of a person deceased shall be assessed to the executor or administrator if one shall have been appointed and qualified, on the first day of May in the year in which the assessment is made, otherwise it may be assessed to the estate of such deceased person, and the tax thereon shall be paid by the executor or administrator if one be thereafter appointed, otherwise by the person or persons in possession of such property at the time of the assessment.

Personal property in hands of two or more executors, etc., residing outside of state or in different districts, how assessed. SECTION 1044*d*. In case one or more of two or more executors of the will or administrators or trustees of the estates of a decedent, whose domicile at the time of his decease was in this state, shall not be residents within the state, the taxable personal property belonging to such estate shall be assessed to the executors, administrators or trustees residing in this state. In case there shall be two or more executors, administrators or trustees of the same estate residing in this state, but in different assessment districts, the assessment of such personal property shall be in the name of all such executors, administrators or trustees, but in the assessment district in which the testator or intestate had his domicile at the time of his decease. In case the executor or administrator, or all of them if more than one, shall not reside in this state, and such property may be assessed in the name of such executors or administrators or in the name of such estate in the assessment district in which the testator or intestate had his domicile at the time of his decease.

How enforced. The taxes imposed pursuant to such assessment may be enforced as a claim against the estate, upon presentation of such claim by the treasurer of such district to the court in which the proceedings for the probate of such estate are pending, and upon due proof such court shall allow and order the same to be paid; and before the allowance of the final account of a nonresident executor, administrator or trustee the court shall ascertain whether there are or will be any taxes remaining unpaid or to be paid on account of personal property belonging to the estate, and shall make such order or direction as may be necessary to provide for the payment thereof. The fore-

going provisions shall not impair or affect any remedy given by other provisions of law for the collection or enforcement of taxes upon personal property assessed to executors, administrators or trustees.

Duties of assessors; as to unincorporated villages. SECTION 1045. The assessor shall enter upon the assessment roll opposite to the name of the person to whom assessed, if any, as before provided in regular order as to lots and blocks, sections and parts of sections (except that so much as is within the limits of an incorporated village or unincorporated village the limits of which have been designated by the town board, shall be assessed in one part of the roll from the best information he can obtain, a correct and pertinent description of each parcel of real property in the assessment district not exempt from taxation and the number of acres in each tract containing more than one acre. When two or more lots or tracts owned by the same person are deemed by the assessor so improved or occupied with buildings as to be practically incapable of separate valuation, they may be entered as one parcel. Whenever any tract, parcel or lot of land shall have been surveyed and platted and a plat thereof recorded according to law, the assessor shall designate the several lots and subdivisions of such platted ground as they are fixed and designated by such plat.

Description of each parcel. This provision is mandatory, subject only to the exception in the second sentence. It is not modified by sec. 1048, which operates to prevent the public from being prejudiced in the collection of revenues because the assessor disobeys this section, when no substantial injury can accrue to the individual owner therefrom. *Neu v. Voege*, 96 Wis. 489.

Mandamus will lie to compel compliance with this section, and may issue at the suit of the owner of tax certificates on a part of the lots in a plat. Ibid.

Public lands and land mortgaged to state. SECTION 1046. The secretary of state shall annually, before the first day of May, make and transmit to the county clerk of each county an abstract containing a correct and full statement and description of all public lands sold and not patented by the state, and of all lands mortgaged to the state lying in his county; and immediately on receipt thereof the county clerk shall make and transmit to the clerk of each town or city in the county a list from said abstract of such lands lying in such town or city, if any. Every assessor shall enter on the assessment roll, in a separate column, under distinct headings, a list of all such public and mortgaged lands, and the same shall be assessed and taxed in the same manner as other lands, without regard to any balance of purchase money or loans remaining unpaid on the same.

This section should be read in connection with sections 1115 to 1149 inclusive, prohibiting county or local treasurers from selling "any public lands held on contract or any lands mortgaged to the state for delinquent taxes," and requiring them to certify a list of said lands and the amount of taxes on each description with interest and charges

to the state treasurer. The latter officer is then required to enter the taxes so returned as an additional charge against said lands. It is important that lands in which the state has an interest be entered in a separate column on the assessment roll in order to guard against the sale thereof for delinquent taxes by local treasurers and to enable the state treasurer to keep proper account of the purchasers or mortgagors thereof in the manner prescribed by sections 1145 to 1149.

Lands, how described in rolls. SECTION 1047. In all assessments and tax rolls, and in all advertisements, certificates, papers, conveyances or proceedings for the assessment and collection of taxes, and proceedings founded thereon, as well heretofore as hereafter, any descriptions of land which shall indicate the land intended with ordinary and reasonable certainty and which would be sufficient between grantor and grantee in an ordinary conveyance shall be sufficient; nor shall any description of land according to the United States survey be deemed insufficient by reason of the omission of the word quarter or the figures or signs representing it in connection with the words or initial letters indicating any legal subdivision of lands according to government survey. Where a more complete description may not be practicable and the deed describing any piece of real property is recorded in the office of the register of deeds for the county, a description stating the volume and page where recorded, and the section, village, or, if within a city, the ward, where the property is situated, shall be sufficient.

Court Decisions

The sufficiency of the description of the land in a tax deed is, under the provisions of section 1047, statutes 1898, to be determined by the same rules as are applicable to ordinary conveyances. If it is impossible to definitely locate the premises conveyed thereby in the light of contemporaneous facts, the deed is void for uncertainty. A tax deed which describes the premises as 140 acres in the east part of a certain fractional quarter section on the north shore of a lake may be construed as covering a strip of uniform width off the east part or side of the quarter section, and is not void for uncertainty if the south and west lines are capable of being fixed by extrinsic evidence. *Mendota Club v. Anderson et al.*, 101 Wis. 479.

A strip sixty-eight feet deep out of the west twenty-five feet of lots 11 and 12 and the north eighteen feet of the west twenty-five feet of lot 10 is held to be sufficiently described in a tax certificate as "W 25 feet by 68 feet deep of lots 9, 10, 11 and 12, block 110," although it did not in fact extend into lot 9 at all. *Cate v. Werder*, 114 Wis. 122.

Land was described in a contract as being in a certain section, town and range east, but mentioned no county or state. Held not void for uncertainty where both vendor and vendee resided in the state, and one party offered to identify the land by witnesses and by reading a deed mentioned in the contract. *Atwater v. Schenck*, 9 Wis. 160. A description in a tax deed which correctly gives the town, but no county or state, is good. *Sprecher v. Wakeley*, 11 Wis. 432.

Where a tax deed purported to convey an undivided one-half of certain land and it appeared that the grantee owned the other undivided one-half and paid the taxes thereon, the description was held sufficient as to the undivided half on which taxes had not been paid. *Hovie v. Rudd*, 165 Wis. 152.

Platting lands for assessment. SECTION 1047a. Whenever any congressional subdivision of land of forty acres or less or any government fractional lot situated outside the limits of any incorporated city is owned by two or more persons in severalty, and the description of one or more of the different parts or parcels thereof cannot, in the judgment of the county clerk, be made sufficiently certain and accurate for the purposes of assessment and taxation without noting the metes and bounds of the same, said county clerk shall notify such owners and proprietors by mail or personally, and if any of such owners and proprietors are nonresidents of the county and their residence is unknown, by publication of such notice once a week for three successive weeks in any newspaper published in the county where such lands are situate, that they are required to make or cause to be made, certified, acknowledged and recorded a plat thereof in the manner and subject to all the conditions of law mentioned in sections 2268 and 2269.

Failure to file plat. If such owners or proprietors, whether so notified or not, fail or neglect to execute and file for record such plat for thirty days after the issuance of said notice the county clerk shall cause such plat to be made and filed for record, and for such purpose may cause to be done all necessary surveying and make and sign all the certificates and acknowledgments in said sections mentioned to be made, signed by the owners; but in lieu of the statement by the owners required in section 2269 said clerk shall annex a statement to the plat, giving the names of the owners of record of the several subdivisions and his certificate that such plat has been executed by him by reason of the failure of the owners or proprietors so named to do so.

Plat must conform to record. In any such plat so made by the county clerk no subdivision shall be recognized or marked thereon unless the same shall appear of record in the office of the register of deeds, and no street, alley, lane or roadway or dedication to public or special use shall be marked thereon unless the same shall be reserved or provided for in some conveyance of record. Said clerk shall file said plat for record, and when so filed for record it shall have the same effect for all purposes as if executed, acknowledged and recorded by the owners or proprietors themeselves. A correct statement of the costs and expenses of such plat, surveying and recording, verified by oath, shall be laid the first session of the county board next to be held; said board shall audit and allow the same and order its payment out of the county treasury. Before the first day of May in each year the county clerk shall notify the town clerks of the making and recording during the preceding year of any such plats affecting land in their several towns.

Same subject. SECTION 1047b. Whenever any congressional subdivision of land as mentioned in section 1047*a*, situated within the limits of any city, is owned by two or more persons in severalty and the description of one or more of the different parts or parcels thereof can-

not, in the judgment of the common council, be made sufficiently certain and accurate for the purposes of assessment and taxation without noting the metes and bounds of the same, said council may so declare by resolution, and in and by such resolution shall direct some officer or board designated therein to cause the same to be platted; and upon the passage of said resolution such officer or board shall proceed to give notice as provided in section 1047*a*, and in default of compliance therewith may cause such land to be platted and acknowledge the same, and have the plat thereof recorded in the manner and with the effect mentioned in said section; provided, that such plat made by such officer or board shall not contain any other subdivision nor any metes or bounds of any subdivision or parcel of land other than such as shall appear of record in the office of the register of deeds; and the surveyor's certificate mentioned in section 2269 need state only the fact that he has platted the parcels of land correctly and has designated them by the numbers and titles of subdivision as appears on said plat. The resolution of the council, certified by the clerk, shall in such cases be recorded with the plat. The expenses of making and recording such plat shall be paid out of the general fund of such city.

Platted lands. SECTION 1047c. Whenever in counties containing a city of the second class, lands have been platted under the provisions of section 1047*a* and the plat thereof embraced more than forty acres and has been recorded, such plat is hereby validated and confirmed and no action shall hereafter be brought or maintained to annul or set aside such plat unless the same be commenced within three months after this act takes effect.

Created by Chapters 83 and 702, 1919.

Assessment as one parcel. SECTION 1048. No assessment of real property which has been or shall be made shall be held invalid or irregular for the reason that several lots, tracts or parcels of land have been assessed and valued together as one parcel and not separately, where the same are contiguous and owned by the same person at the time of such assessment.

The effect of this section is merely to prevent the public from being prejudiced in the collection of its revenues because the assessor fails to obey sec. 1045 when no substantial injury results to the individual owner thereby. This section does not affect the right to have an assessment made as provided by sec. 1045. *Neu v. Voege*, 96 Wis. 489.

The failure to comply with what is implied by this provision, by the assessment of lots of different owners in one parcel, goes to the groundwork of the tax. *Plumer v. Supervisors*, 46 Wis. 164, 181.

The principle of this section seems to be that it is the duty of the state or public authority to levy and liquidate the tax and of the owner to pay it. The latter has no means of determining his share of a tax levied in gross on a lot owned by him and one owned by some other person. *Plumer v. Supervisors*, 46 Wis. 164, 182. See *Towne v. Salentine*, 92 id. 404. But where a lot is properly assessed to the owner, who afterwards disposes of a part in severalty, the local or county treasurer may, from view or by affidavits ascertain the true proportion which the grantee ought to pay. (Sec. 1093.)

Husband and wife. Lots owned by a married woman as her separate property and in her possession cannot be assessed as one tract together with lands owned and occupied by her husband. The jurisdiction of equity having attached to annul the tax certificate, may restrain a sale of personal property for such tax. *Hamilton v. Fond du Lac*, 25 Wis. 490. Such an assessment is not rendered valid by an act declaring certain assessments, including this, to be valid, "notwithstanding any omission, defect or irregularity" in the proceedings. Ibid.

Personalty, how entered. SECTION 1049. The assessor shall place in one distinct and continuous part of the assessment roll all the names of persons assessed for personal property, with a statement of such property in each village in his assessment district, and foot up the valuation thereof separately; otherwise he shall arrange all names of persons assessed for personal property on his roll alphabetically so far as he conveniently can. He shall also place upon the assessment roll, in a separate column and opposite the name of each person assessed for personal property, the number of the school district in which such personal property is subject to taxation.

The omission to assess personal property may avoid the assessment and require a reassessment under sec. 1164a. *Johnson v. Oshkosh*, 65 Wis. 473.

The omission to assess a taxpayer's personal property may prevent relief against an illegal increase of value of his real property. *Knapp v. Heller*, 32 Wis. 467.

Equity will not restrain taxes illegally assessed on personal property. *Van Cott v. Supervisors*, 18 Wis. 257; *Peck v. School District*, 21 id. 516; *Bond v. Railway Co.*, 45 id. 543.

The sole remedy in such cases is to pay the tax under protest and file claim or bring action for refund of the unlawful excess. *Keystone L. Co. v. Pederson*, 93 Wis. 466; *Duluth Log Company v. Hawthorne*, 139 Wis. 170; *Stange Co. v. Merrill*, 134 Wis. 514.

Aggregate values. SECTION 1050. Every assessor shall ascertain and set down in separate columns prepared for that purpose on the assessment roll and opposite to the names of all persons assessed for personal property the number and value of the following named items of personal property assessed to such person, and which shall constitute the assessed valuation of the several items of property therein described, to wit:

(1) The number and value of horses of all ages.
(2) The number and value of neat cattle of all ages.
(3) The number and value of mules and asses of all ages.
(4) The number and value of sheep and lambs.
(5) The number and value of swine.
(6) The number and value of wagons, carriages and sleighs.
(7) The number and value of gold and silver watches.
(8) The number and value of pianos, organs and melodeons.
(9) The value of bank stock.
(10) The value of merchants and manufacturers' stock.
(12) Value of leaf tobacco.

(13) The value of logs, timber, lumber, ties, poles and posts, not manufacturers' stock.
(14) Number and value of steam and other vessels.
(15) Values of real and personal property and franchises of water and light companies.
(16) Number and value of all bicycles.
(16a) The number and value of all automobiles and other motor vehicles.
(17) Value of all other personal property except such as is exempt from taxation.
(18) Total value of all personal property.

Subdivisions 8, 9 and 11 of this section were partially repealed or modified by chapter 658, 1911, commonly known as the income tax act. The limitation on the value of watches and musical instruments previously existing was removed. "One watch carried by the owner" and "one musical instrument" for personal or family use are now absolutely exempt. Additional watches or musical instruments held for personal or family use are taxable as other personal property.

Stocks and bonds exempt. The income tax act further exempted all stocks, bonds and intangible securities without any corresponding amendment of section 1050. Subdivision 11 of this section requiring a separate statement of moneys and credits was repealed by chapter 586, 1917. Subdivisions 7, 8 and 16 now apply only to the rare cases where the same person owns more than one watch, musical instrument or bicycle and may well be repealed and additional property of this character above the exemption, assessed under the head of other personal property. Watches, bicycles and musical instruments carried in stock for sale or rent should be assessed as merchants' stock under subdivision 10. See section 1038 and notes. *Ante.*

Assessment of bank stock. SECTION 1051. 1. Upon the demand of the assessor, the president, cashier or other officer in charge of any bank, shall make out and deliver to the assessor annually on or before the first day of June a verified statement showing the number and par value of the shares of stock, the names and residence of each stockholder therein on the preceding first day of May and the amount of stock owned or held by him on that day.

2. All the shares of stock of every bank or banking association whether organized under the authority of any law of this state or of any act of the congress of the United States shall be assessed and taxed in the assessment district in which such bank is located for the transaction of business.

3. The shares of stock in any bank shall be liable to assessment and taxation as personal property and shall be entered upon the assessment roll in the names of the several owners, separately from the assessment of other personal property assessable to such owners. The valuation of such shares of stock and the taxes thereon shall be separately entered in the tax roll.

Consolidated with section 1042 by chapter 769, 1913. This section adopts the scheme prescribed by Congress for taxation of national banks by section 5219 of the United States Statutes and requires all

shares of stock to be assessed as personal property to the owners thereof in the district where the bank is located. See note to section 1057. Pages 77, 78.

HOW PROPERTY TO BE VALUED.

Real estate. SECTION 1052. Real property shall be valued by the assessor from actual view or from the best information that the assessor can practicably obtain, at the full value which could ordinarily be obtained therefor at private sale. In determining the value the assessor shall consider, as to each piece, its advantage or disadvantage of location, quality of soil, quantity of standing timber, water privileges, mines, minerals, quarries, or other valuable deposits known to be available therein, and their value. But the fact that the extent and value of minerals or other valuable deposits in any parcel of land are unascertained shall not preclude the assessor from affixing to such parcel the value which could ordinarily be obtained therefor at private sale. Real property held under lease from any religious, scientific, literary, or benevolent association, but otherwise exempt, shall be assessed to the lessee. The assessor, having fixed the value, shall enter the same opposite the proper tract or lot in the assessment roll. In one column he shall enter the value of the land, exclusive of the buildings thereon; in a separate column under the head "Improvements," he shall enter the value of such buildings, together with machinery and fixtures therein, if any, not separately assessable, as personal property; and in the third column he shall enter the value of both land and improvements.

True value. Correct valuation of property is the assessor's most important duty. Failure in this particular is the bane of taxation and has been the source of more complaint and litigation than all other causes combined. The above section requires real estate to be assessed "at the full value which could ordinarily be obtained therefor at private sale," and section 1055 requires personal property to be assessed at its "true cash value." In both cases the law is plain and positive and no discussion can add to its definiteness or force. Nevertheless the practice of assessing property at an estimated percentage of its true value still prevails in different parts of the state. Such practice is in flagrant violation of law and has been condemned by courts, commissions and administrators everywhere.

Thus the supreme court of this state has said, "There is really no security to the taxpayer except in requiring assessors to perform their duty and make assessments in substantial compliance with law. If the assessor in one town is permitted to assess property at one-third of its value, the assessor in another town may assess it at one-half or one-fourth and still another at double its value, substituting the mere caprice of the assessor for the rule of the statute and thus producing the grossest inequality and injustice in the taxes imposed. Therefore, without considering any other question in the case, we affirm the judgment setting aside the tax on the ground that the assessment as made was illegal and void. *Schettler v. Ford Howard*, 43 Wis. 48.

Undervaluation condemned. Denouncing the same practice, Chief Justice Ryan used the following vigorous language: "If it be true that assessments throughout the state are generally made in defiance of statutory rule it appears to be better that the state and its municipal

corporations should suffer inconvenience than that our whole system of taxation should at the mere will of local officers be a fraud upon the constitution and statutes, carefully framed in compliance therewith * * *. If the assessor make and annex the affidavit to an assessment made in violation of the statutory rule he takes an absolutely false oath in the execution of his office. What faith can be reposed in an assessment so made and so verified. *"Falsus in uno, falsus in omnibus.* Idem.

These expressions were uttered in 1877 and thirty years later the late Justice Barnes said: "In order to make an equal distribution of county and state taxes, it is essential that all taxable property be discovered and placed upon the tax rolls, and that a uniform basis for valuation be adopted and adhered to. So long as the practice prevails of assessing property in different localities at figures varying from twenty-five to one hundred per cent or more of its true value and of doing the same thing locally, so long are we liable to have gross inequalities in the distribution of the tax burden. The state in endeavoring to enforce the requirements of the law in regard to the assessment and equalization of property is not acting as a mere interloper exercising a paternalistic function for the purpose of exploiting its right to do so, but is attempting in good faith to perform a duty in which its citizens generally have more than a passing interest." *State ex rel. Hessey v. Daniels*, 143 Wis. 649.

Discussing the practice of undervaluation and of assessing all articles in a given statutory class at a uniform price regardless of value, the Minnesota tax commission used this language: "Such methods invariably result in the grossest injustice not only to districts taken as a whole but to individual taxpayers as well, and are unquestionably the most vicious and indefensible of all the illegal practices that have fastened themselves upon the taxing system during fifty years of law breaking. They work almost invariably in favor of taxpayers owning high grade and costly property and against the owners of inferior and inexpensive property. In short, they favor the rich against the poor and worst of all they leave the small taxpayer without any adequate means of redress.

Similar expressions might be quoted from nearly every court and commission in the United States, but space forbids further elaboration.

Penalties for under-valuation. Assessors who intentionally undervalue property are subject to removal from office (section 1059a); to prosecution and fine (section 4548d); and to civil liability for any damages sustained by their misconduct (section 4548f). Any taxpayer prejudiced by any assessment made in this manner may apply for reassessment and if granted, impose the entire expense on the offending community. Sections 1087—45 and 1087—55.

It will be seen therefore that the law affords ample protection to districts making a lawful assessment and provides severe penalties against those which fail to do so. It is to be hoped that assessors will faithfully perform their sworn duties and assess all property at its true value as the law requires so that action under the penal statutes may not be necessary. Assessors of income are requested to report violations of the statute in this respect to the tax commission, where they will receive the attention their importance demands.

County equalization. The only possible excuse for the practice is the fear that districts which are assessed at full value will suffer in the state and county assessment, but under-valuation is a game that every assessment district can play at and in the end it is calculated to increase rather than lessen the injustice. The state assessment is based upon information collected by the tax commission, wholly independent of the local assessment, and it can be con-

fidently said that no county is allowed to suffer as the result of a lawful assessment. The data used by the tax commission in making the state assessment are submitted to county boards as a guide in equalizing the value of property in the several assessment districts of their counties, and this is supplemented by information furnished by the assessors of incomes. County boards are not authorized to adopt valuations made by local assessors and do not in fact rely upon them. On the contrary, they are required by law to determine the value of the property in each asessment district at the "full value according to their best judgment." Section 1073.

Assuming the members of the county board to be fair and intelligent men, familiar with the conditions in their respective counties, it is inconceivable that their action should be influenced by the cheap subterfuge of under-valuation. But if any such result should follow, any assessment district adversely affected is given the right of appeal to the tax commission from the equalization made by the county board. Section 1077a.

The plain letter of the law demands and public interest requires that all property be assessed according to its true value, and assessors are earnestly urged to cooperate with the tax comimssion in the effort to put an end to the lawless and demoralizing practice of under-valuation.

Market value. The words "full value which could ordinarily be obtained therefor at private sale," in section 1052, and the words "true cash value," in section 1055, are understood to mean the same thing, namely, such a value as would ordinarily be agreed upon between buyer and seller, assuming that the owner desires to sell and there is a purchaser willing and able to buy. It is not what property would bring at a forced sale. Property having a fairly well defined market value should be assessed accordingly. But property not presently salable may nevertheless have substantial value. As to such property, its cost, physical condition, state of repair, surroundings, the use it can be put to and the price offered or asked for it, if any, may all be considered in determining its value, but neither alone can be relied upon. The capacity of property having no fixed market value to produce income from any use it could be put to would seem to be the best measure of its value.

Value of buildings. It is considered that the word "improvements," as used in the last paragraph of the above statute, refers to buildings and not to fences, clearings, ditches, and the like. In determining the value of such buildings as therein required, the proper measure would seem to be the difference between what the land and buildings would sell for taken together and what the land would sell for without the buildings. But see *State v. Norsman* 168 Wis. 442.

This section is not invalid on the ground that the rule provided for the valuation of realty is different in detail from that for the valuation of personalty; both being required to be assessed at their full value. *Plumer v. Supervisors*, 46 Wis. 163.

An assessment which excludes improvement is void. *Hale v. Kenosha*, 29 Wis. 599; *Spear v. Door Co.*, 65 id. 298.

Court decisions, etc. Assessment at such a price as the lands would bring at forced sale void, being less than the market value. *Goff v. Supervisors*, 43 Wis. 55. So of an assessment at one-third of the real value. *Schettler v. Fort Howard*, 43 Wis. 48; *Tierney v. Lumber Co.*, 47 id. 248; *Single v. Stettin*, 49 id. 645; *Flanders v. Merrimack*, 48 id. 567. So of an assessment at a price at which the whole property of the city if thrown on the market on the day of the assessment would

bring in cash. This is not the price which could ordinarily be obtained for each parcel at private sale, and is not the rule of the statute. *Salscheider v. Ft. Howard*, 45 Wis. 519.

Real estate should be valued by the assessors at the full value which would ordinarily be obtained therefor at private sale. *State ex rel. Miller v. Thompson*, 151 Wis. 184, 187.

Errors judgment in the valuation of property, when the officers are in good faith attempting to discharge their duties, do not avoid the tax. But fraud in the assessment is good ground for the interference of equity to restrain further proceedings. *Lefferts v. Supervisors*, 21 Wis. 688; *Milwaukee Iron Co. v. Hubbard*, 29 id. 51; *Brauns v. Green Bay*, 55 id. 113.

An arbitrary classification of lands, with reference to their proximity to streams for driving logs, and wild lands and farming lands according to their locality and not their real value, without any fraudulent intent, renders the proceedings void and the collection of the tax may be restrained. *Hersey v. Supervisors*, 37 Wis. 75; *Marsh v. Supervisors*, 42 id. 502 (lands in a whole town valued at $2.50 per acre); *Philleo v. Hiles*, 42 id. 527 (assessment neither from actual view nor from information); *Hewitt v. Butterfield*, 52 id. 384 (wild lands assessed at uniform rate); *Bradley v. Lincoln Co.* 60 id. 70 (arbitrary classification not from actual view).

Value of land as increased by dam in connection with franchise. It was assumed by the court that the corporate rights, franchises and plant of a river improvement company are taxable. It was held, however, that a flooding dam, built by a corporation chartered for the purpose of improving the navigation of a river, used for such purpose only and valuable only in connection with the franchise and essential to the full enjoyment thereof, was improperly assessed at its value, in connection with those franchises, as a part of the land on which it was built. *Yellow River Imp. Co. v. Wood Co.*, 81 Wis. 554.

Evidence as to the value of property under this section should relate to what it is worth as an entirety and a going concern, assuming that a purchaser at private sale would continue the use of the property. Testimony as to what it was worth when split up in parts is not material. *State v. Williams*, 123 Wis. 73.

The fact, shown before a board of review, that real property is not on a paying basis as presently managed does not establish its value; nor does the fact that old buildings thereon if torn down would be worth only the wreckage establish their value as a going concern; nor does the fact that the owner will derive a larger revenue from a lease of the land for ninety-nine years, which has been made to one who will tear down the old and erect new buildings, show that the present buildings are not worth the assessor's valuation. Evidence of such facts is not evidence of the market value of the property or the price which could ordinarily be obtained for it at private sale. *State ex rel. Miller v. Thompson*, 151 Wis. 184.

Valuation and assessment of lead and zinc bearing lands. SECTION 1053. 1. For purposes of assessment and taxation lands containing deposits of lead or zinc shall be valued in the following manner, to wit: The value of each parcel of such land, exclusive of its mineral content, shall first be determined and to this there shall be added, in lieu of the value of such mineral content, one-fifth of the gross amount of sales of any ore, mineral, or deposit extracted from such land at any time and sold during the preceding calendar year. Nothing herein shall be construed to exempt from taxation the buildings, machinery,

mills, equipment, stores, supplies or other personal property of any person, copartnership, corporation, association or company engaged in mining or extracting such deposits.

2. On or before the twenty-fifth day of June, 1915, and on or before the first day of April of each year thereafter, every owner of such land, and every person, copartnership, corporation, association, or company engaged in mining or extracting such deposits shall furnish to the assessor of incomes of the district in which such land is situated a verified statement or return giving a correct description of each such parcel of land, the name of the owner thereof, the amount of sales or purchases of all ore, minerals and deposits mined or extracted therefrom at any time and sold during the preceding calendar year, and such other fact and information as may be necessary to enforce the provisions of this act. In the discretion of the assessor of incomes, similar reports may be required from every person, copartnership, association, corporation or company, engaged in purchasing such ore, minerals or deposits.

3. On or before the twenty-eighth day of June, 1915, and on or before the first day of June of each year thereafter, the assessor of incomes shall determine the gross amount of sales of such ore, minerals or deposits from each parcel of land subject to this act; and shall certify the same to the assessor of each district in which such land is situated. On the basis of such sales in the manner hereinbefore prescribed, the valuation of each such parcel of such land shall be computed by the assessor, entered on the assessment roll, and after the examination and review provided by section 1061 shall be taxed as other property in the same district is taxed.

This section created by Chap. 388, 1915, prescribes a special method of assessing lands containing deposits of lead or zinc, and for that reason may be open to constitutional objection. The scheme of the statute requires the land, exclusive of the mineral content, to be assessed in the same manner as other agricultural land of the same character and location, and measures the value of the mineral content by one-fifth of the gross sales of ore extracted therefrom and sold during the preceding year. The value of the minerals is then added to the value of the agricultural surface and the sum of the two items represents the assessment against the land. Where the mineral rights are separately owned, as is commonly the case this course often results in imposing the tax on the surface owner after the ore has been removed. This, however, seems to be inevitable from the letter of the statute and the absence of any existing law for the separate assessment of mineral rights. Opinion of Tax Commission to Cleary May 15, 1916; Tax Commission to Fieldler & Fieldler Jan. 5, 1917.

In such cases all buildings, machinery and equipment should be assessed to the owners thereof as real estate under sections 1035 and 1043 of the statutes. Pages 38, 60 Supra.

Personalty. SECTION 1055. All articles of personal property shall as far as practicable, be valued by the assessor upon actual view at their true cash value; and after arriving at the total valuation of all articles of personal property which he shall be able to discover as

belonging to any person, if he have reason to believe that such person has other personal property or any other thing of value liable to taxation, he shall add to such aggregate valuation of personal property an amount which, in his judgment, will render such aggregate valuation a just and equitable valuation of all the personal property liable to taxation belonging to such person.

Section 1052 provides that the assessment of real estate shall be made from actual view as far as practicable. This section requires personal property to be valued in the same way and section 1063 requires assessors to make affidavit that they have as far as practicable viewed and inspected all property assessed by them except unimproved real estate in towns containing more than 108 square miles. It is difficult to see how assessors can perform the duties imposed upon them by these provisions without actual inspection of the property assessed. Inequality resulting from failure to do so in the case of real estate was held fatal to the tax in Clark v. Lincoln County 54 Wis. 580, and the same principle applies to personal property.

Where it is impracticable to view every item of personal property, as in the case of merchants and manufacturers' stock, test inspections should be made and the taxpayer should be carefully examined and required to produce his inventories and other data in his posession relating to the quantity and value thereof.

The general provision of section 1055, statutes of 1898, requiring property to be assessed from actual view, does not apply to an assessment of personal property omitted from a previous assessment, under section 1059 as amended, since the latter section provides that assessment thereunder shall be according to the assessor's best judgment. *State ex rel Davis & Starr Lbr. Co. v. Pors.* 107 Wis. 420.

See note to section 1052 for discussion of assessment according to true value, pp. 71, 72.

Taxpayer may be examined on oath. SECTION 1056. To determine the amount and value of personal property for which any person should be assessed, any assessor may examine such person under oath as to all such items of property and the true value thereof; and should any person refuse to so testify, or should any assessor or the board of review hereinafter provided for desire further evidence, they may call upon other persons as witnesses to give evidence under oath as to the items and value of the personal property of such person.

Under this section the assessor is authorized to examine owners of personal property under oath as to the amount and value of their property. Should any owner refuse to be sworn or testify, the assessor should exercise his doomage power under section 1055 and assess him for such an amount as in his judgment will render the aggregate valuation of his personal property just and equitable.

An entry by the assessor in his roll, opposite the taxpayer's name, that he "refused to answer the questions of the assessor after being sworn," is equivalent to the entry that he "refused to swear," *Wauwatosa v. Gunyon*, 25 Wis. 271.

A bank is bound by the statement made by its cashier to the assessor as to the value of its personal property it not appearing that the cashier did not act in good faith nor that the bank was insolvent. A receiver of the bank can not claim that a tax based upon such statement is invalid. *Hamacker v. Commercial Bank*, 95 Wis. 359.

False statement; duty of district attorney. SECTION 1056a. Any person, firm or corporation in this state owning or holding personal property of any nature or description, individually or as agent, trustee, guardian, administrator, executor, assignee or receiver, which property is subject to assessment, who shall intentionally make a false statement to the assessor of his assessment district or to the board of review thereof for the purpose of avoiding the payment of the just and proportionate taxes thereon, shall forfeit the sum of ten dollars for every one hundred dollars or major fraction thereof so withheld from the knowledge of such assessor or board of review. It is hereby made the duty of the district attorney of any county, upon complaint made to him by any taxpayer of the assessment district in which it is alleged that property has been so withheld from the knowledge of the assessor or board of review, or not included in said statement, to investigate the case forthwith and bring an action in the name of the state against the person so complained of. All forfeitures collected under the provisions of this section shall be paid into the county treasury.

Intentionally make a false statement. The action authorized is penal; a case must be fully within the statute. To sustain a conviction the intention must be found to exist. A verdict which finds the defendant "guilty, not criminally, but negligently," in not returning a sum to the board of review, is in favor of the defendant. *State v. Wolfrum*, 88 Wis. 481.

Assessment, how made; deductions. SECTION 1057. In the assessment of shares of stock in any bank the assessor shall first determine the total true cash value of all of such shares according to his best judgment. If the building in which such bank maintains its offices and transacts its business be owned by such bank, the assessed value thereof, including the land upon which it is located, if owned by such bank, shall be deducted from the total value of such shares. The remainder of such total value, or the whole thereof if the bank does not own such building, divided by the total number of such shares shall be taken as the valuation for assessment of each of such shares. No deduction shall be made on account of any other real estate in the assessment of the shares of stock of any bank.

There is no direct assessment of the personal property of banks. All such property is reached through the assessment of the shares of stock to the individual stockholders, which "shall be in lieu of all taxes upon their capital, surplus and assets" Section 1057c. If the stock has a fixed market value, obviously that should be used for assessment purposes. If not, the book value, including capital, surplus and undivided profits, volume of business and average profits for a period of years should be considered in determining its value. In short the assessor should take into account every fact and circumstance which would influence a careful purchaser in buying the stock.

Deduction of Real Estate. The real estate of banks is required to be separately assessed in the same manner as other real estate. Inasmuch as the aggregate value of the shares of stock covers all property owned by the bank, provision is made for deducting the assessed value

of the real estate used for banking purposes, if owned by the bank, from the value of the stock. The object of this provision is to prevent double taxation and it would be unfair to allow such deduction unless the true value of the real estate used for banking purposes were reflected in the stock assessment. The custom of writing down slow assets like real estate is common among banks and assessors are cautioned to see that the true value of the bank building is included in assessment of the stock. When the stock is properly valued the assessment of the entire building in which the bank carries on its business may be deducted therefrom even though part of such building is used for other than banking purposes. The statute expressly prohibits the deduction of all other real estate except that in which the bank carries on its business. *State ex rel. Second Ward Savings Bank v. Luech*, 155 Wis. 493.

"The value of the stock in the hands of the shareholders includes the net value of all property which the corporation owns,—not only intangible property but also the franchise and any good will from which probability of profits results." First National Bank v. Douglas County 124 Wis. 15. "Good will is the result of the employment of capital in some established business which augments its value, is incident to the conduct of the enterprise and exists at the place where the business is carried on. A banking corporation may have a good will which when acquired constitutes property." *Lindeman v. Rusk* 125 Wis. 210.

Court decisions. "Where the capital stock of a banking corporation whose articles of incorporation have previously been filed was subscribed and paid for except as to a few shares and the certificates of stock issued prior to May 1, 1913, the stock was taxable in that year, although the certificate of the bank commissioner authorizing the corporation to commence the business of banking was not issued until May 12, 1913." *Farmers and Merchants Bank v. Richland Center* 159 Wis. 185.

Under Section 1057, the mere interruption of the active occupation and use of the building for banking purposes caused by making necessary repairs or enlargement or rebuilding to meet the demands of the business does not change its local status nor deprive it of the right to have the value of such land and building deducted from the assessment of its stock. *State ex. rel. Savings Bank vs. Luech*, 155 Wis. 493.

The assessed valuation of real estate occupied by a bank and used for banking purposes but held under lease cannot be deducted from the assessment of its stock. *State ex. rel. Marshall & Ilsley Bank vs. Luech*, 155 Wis. 500.

Tax a lien on shares of stock; levy and sale. SECTION 1057a. The taxes levied upon the shares of stock in any bank shall be a lien upon such shares from the time of the assessment on the preceding first day of May, which lien shall be prior to all other claims or liens. Such taxes and the lien therefor may be enforced by any officer having authority to collect such taxes by levy upon and sale of such shares of stock under his warrant for the collection thereof. Such levy may be made by delivering to the president or cashier of such bank, or to any other person who has at the time the custody of the books and papers thereof, a notice referring to such warrant and stating that by virtue thereof he thereby levies upon such shares of stock, designating the number of such shares, the name of the person to whom assessed

and the amount of taxes thereon, for the purpose of making sale thereof to satisfy such taxes in the manner provided by law. In making sale of such shares under such warrant it shall not be necessary for such officer to exhibit or have in his possession the certificates or other evidences of such shares. Upon making such sale the officer shall issue duplicate certificates of sale in the manner specified in section 2990 of the statutes and the purchaser at such sale shall be entitled to all the rights and remedies given in said section 2990 to purchasers of shares of corporate stock upon sale under execution.

Bank may pay tax on stock. SECTION 1057b. Any bank is authorized to pay such taxes on the shares of stock in such bank and shall have a lien from the preceding first day of May upon the shares of stock for the amount of the taxes so paid with interest and for any costs or expenses incurred therewith or any such bank may at its option pay such taxes for all the stockholders in such bank out of its earnings or other available resources as the expenses of such bank.

Exemption. SECTION 1057c. The taxation of the shares of stock in banks as provided in sections 1051, 1057, 1057*a* and 1057*b*, shall be in lieu of all taxes upon the capital, surplus, property and assets of such banks, except as hereinafter provided, except that no real estate owned by any bank or banking association or constituting the whole or any part of its capital, surplus or assets shall be exempt from taxation.

Occupation tax on grain. SECTION 1057m. Every person, copartnership, association, company or corporation operating a grain elevator or warehouse in this state, except elevators and warehouses on farms for the storage of grain raised by the owner thereof, shall on or before December fifteenth of each year pay an annual occupation tax of a sum equal to one-half mill per bushel upon all wheat and flax and one-fourth mill per bushel upon all other grain received in or handled by such elevator or warehouse during the preceding year ending April thirtieth; and such grain shall be exempt from all taxation, either state or municipal.

Amended by Chap. 486, 1919.

This section and the five following were created by Chap. 209, 1915, and amended by chapter 481, 1919, by doubling the rates prescribed in the original act on and after January 1, 1920.

This act imposes an occupation tax and not a property tax and is constitutional. *State ex rel Stern and Sons v. Bodden* 165 Wis. 75.

The provision that "such grain shall be exempt from all taxation" was intended to exempt, in consideration of the payment of the occupation tax, only grain actually in the elevators on May 1st of each year and not to exempt grain then in the possession of others although it might at some time during the year be handled in such elevators or warehouses. Idem.

Neither clover, hemp, peas nor beans are grain within the meaning of Chap. 209, 1915. Opinion of Tax Commission to Bodden July 7, 1915.

Statement for assessment of grain storage. SECTION 1057n. Every such person, copartnership, association, company or corporation, operating a grain elevator or warehouse within the state except elevators and warehouses on farms for the storage of grain raised by the owner thereof, shall on May first of each year furnish to the assessor of the town, city or village within which such grain elevator or warehouse is situated, a full and true list or statement of all grain specifying the respective amounts and different kinds thereof received in or handled by such elevator or warehouse during the year immediately preceding May first of such year in which such list or statement is so to be made. Any such operator of an elevator or warehouse who shall fail or refuse to furnish such list or statement or who shall knowingly make or furnish a false or incorrect list or statement, shall be punished by a fine not exceeding one thousand dollars.

Assessment and collection of tax on grain storage. SECTION 1057o. The tax herein provided for shall be separately assessed to the person, copartnership, company, association or corporation chargeable therewith by the assessor and shall be included in the assessment roll annually submitted by such assessor to the town, village or city clerk and shall be entered by said clerk on the tax roll. Such tax shall be paid and collected in the same manner as taxes on personal property are paid and collected in the taxing district where such elevator or warehouse is situated, and when paid may be credited to or offset against income taxes in the same manner as personal property taxes are credited or offset as provided in section 1087*m*—26 of the statutes.

Failure to submit correct statement for grain storage assessment. SECTION 1057p. If the assessor or board of review shall have reason to believe that the list or statement made by any person, copartnership, association, company or corporation is incorrect, or when any such person, copartnership, association, company or corporation has failed or refused to furnish a list or statement as required by law, the assessor or board of review shall place on the assessment roll such taxes against such person, copartnership, association, company or corporation as he or they shall deem true and just, and in case such change or assessment is made by the assessor, the assessor shall give written notice of the amount of such assessment at least six days before the first or some adjourned meeting of the board of review; in case such change or assessment is made by the board of review, notice shall be given in time to allow such person, copartnership, association, company or corporation to appear and be heard before the board of review in relation to said assessment; said notice may be served in the manner provided in section 1056 of the statutes.

Taxation statutes applicable to grain storage taxation. SECTION 1057*q*. All laws not in conflict with the provisions of this act relating to the assessment, collection and payment of personal property taxes,

the correction of errors in assessment and tax rolls, shall apply to the tax herein imposed.

See *State ex rel. Stern & Sons v. Bodden* 165 Wis. 75 and note to section 1057m, page 79 Supra.

Occupation tax on coal. Section 1057t. 1. Every person, copartnership, association, company or corporation, operating a coal dock in this state, other than a dock used solely in connection with an industry and handling no coal except that consumed by such industry, shall on or before December fifteenth of each year pay an annual occupation tax of a sum equal to one and one-half cents per ton upon all bituminous coal, and two cents per ton upon all anthracite coal handled by or over such coal dock, during the preceding year ending April thirtieth; and such coal shall be exempt from all taxation, either state or municipal.

2. Every such person, copartnership, association, company or corporation operating a coal dock within the state, other than a dock used solely in connection with an idustry and handling no coal except that consumed by such industry, shall on May first of each year furnish to the assessor of the town, city or village within which such coal dock is situated, a full and true list or statement of all coal, specifying the respective amounts and different kinds thereof, received in or on, or handled by or over such coal dock during the year immediately preceding May first of such year in which such list or statement is so to be made. Any such operator of a coal dock who shall fail or refuse to furnish such list or statement or who shall knowingly make or furnish a false or incorrect list or statement, shall be punished by a fine not exceeding one thousand dollars.

3. The tax herein provided for shall be separately assessed to the person, copartnership, company, association or corporation chargeable therewith by the assessor and shall be included in the assessment roll annually submitted by such assessor to the town, village or city clerk and shall be entered by said clerk on the tax roll. Such tax shall be paid and collected in the same manner as taxes on personal property are paid and collected in the taxing district where such coal dock is situated, and when paid may be credited to or offset against income taxes in the same manner as personal property taxes are credited or offset as provided in section 1087*m*—26 of the statutes. Taxes collected under the provisions of this section shall be divided as follows, to wit: Ten per cent to the state, twenty per cent to the county, and seventy per cent to the town, city or village in which such taxes are collected, which shall be remitted and accounted for in the same manner as the state and county taxes collected from property are remitted and paid.

4. If the assessor or board of review shall have reason to believe that the list or statement made by any person, copartnership, association, company or corporation is incorrect, or when any such person, copartnership, association, company or corporation has failed or refused to furnish a list or statement as required by law, the assessor or board

of review shall place on the assessment roll such taxes against such person, copartnership, association, company or corporation as he or they shall deem true and just, and in case such change or assessment is made by the assessor, the assessor shall give written notice of the amount of such assessment at least six days before the first or some adjourned meeting of the board of review; in case such change or assessment is made by the board of review, notice shall be given in time to allow such person, copartnership, association, company or corporation to appear and be heard before the board of review in relation to said assessment; said notice may be served in the manner provided in section 1056 of the statutes.

5. All laws not in conflict with the provisions of this act relating to the assessment, collection and payment of personal property taxes, the correction of errors in assessment and tax rolls, shall apply to the tax herein imposed.

This section created by Chap. 555, 1917, imposes an occupation tax on the business of operationg coal docks in lieu of the general property tax. It is similar to the act for the taxation of grain handled through elevators created by Chap. 209, 1915. See note to section 1057m, page 79 Supra.

The act provides for an occupation tax upon persons operating coal docks and has no application to coal held for retail purposes by dealers not operating docks, nor does it apply to supplies of coal held by manufacturing companies intended for use in the operation of their business. Tax Commission to Cook and Brown Lime Company, August 1917.

FORMER ERRORS TO BE CORRECTED.

Correction of error, how made. SECTION 1058. If any assessor shall discover that any error was made in any assessment roll during the preceding year, by which the valuation of any real or personal estate subject to taxation was increased or reduced from the true assessed valuation thereof, he shall correct such error by adding to or subtracting from, as the case may be, the valuation of such property on his assessment roll as fixed by him, the amount omitted from or added to the true assessed valuation in consequence of such error and make a marginal note of such correction, and the result shall be taken as the true valuation of such property for the latter year and a final correction of such error.

The corrections authorized by this section are confined to clerical errors in transcribing or carrying out the assessor's valuation of the preceding year. The statute does not authorize the assessor to revise assessments of former years according to his present judgment.

Assessment; property omitted. SECTION 1059. Real or personal property omitted from assessment in any of the three next previous years unless previously reassessed for the same year or years, shall be entered once additionally for each previous year of such omission, designating each such additional entry as omitted for the year 19.. (giving year of omission) and affixing a just valuation to each entry for

a former year as the same should then have been assessed according to his best judgment, and taxes shall be apportioned, and collected on the tax roll for such entry.

Reason for omission immaterial. This statute originally applied to real estate only. By the amendment of 1899 it was extended to include personal property. It was again amended in 1909 by striking out the words "by mistake or inadvertence." As the section now stands, it would seem that property omitted from assessment for any cause in any given year may be assessed as omitted property in any of the three succeeding years.

Failure of an assessor to assess a part of certain property under the mistaken notion that such part was not subject to local taxation does not preclude assessment thereof in the following year as omitted property. *State v. Hanna Dock Co.* 143 Wis. 449.

Under a statute which declared that "if any taxes provided for by law for school purposes shall fail to be assessed at the proper time the same shall be assessed in the succeeding year," it has been held that the assessment provided for may be made where none of the steps which precede an assessment have been taken, as where the school board failed to certify the amount to the town clerk within the time provided by law; also that a purchaser of the land subject to such prior assessment cannot recover the taxes paid by him, though they were not, when he purchased, a lien upon the land, and he had no notice of the non-assessment of the previous year. *Wilcox v. Eagle*, 45 N. W. Rep 987.

The legislature did not intend to limit the effect of the amendment of 1899 to such personal property as remained unchanged in ownership or location, but intended thereby to include any and all personal property which by inadvertent omission escaped assessment and that such intention is capable of enforcement as to any omitted property which between the time of its omission and the time of reassessment, has passed out of existence, out of the ownership of the persons assessed or out of the assessment district. *State ex rel. Davis & Starr Lbr. Co. v. Pors*, 107 Wis. 420.

The words "entered once additional" held to apply to the purpose contemplated by the statute, rather than to the clerical method by which it is to be accomplished and to be one of the steps leading to the ultimate result,—that the taxes shall be apportioned and collected on the tax roll for such entry. *State ex rel Davis and Starr Lbr. Co. vs. Pors*, 107 Wis. 420.

CHAPTER VI

BOARDS OF REVIEW; EQUALIZATION OF TAXES; CORRECTION OF TAX ROLLS

Boards of review; members; organization. SECTION 1060. 1. The supervisors and clerk of each town, the mayor, clerk and such other officer or officers, other than assessors, as the common council of each city shall, by ordinance determine, the president, clerk, and such other officer or officers, other than the assessor, as the board of trustees of each village shall by ordinance determine, shall constitute a board of review for such town, city, or village.

Meeting. 2. Such board shall meet annually on the last Monday of June at its town, city or village clerk's office, provided that in towns it may meet at the place where the last annual town meeting was held. A majority shall constitute a quorum.

Notice. 3. Notice of the time and place of meeting shall be posted up by such clerk in at least three public places in each town, village, or city, or ward thereof, at least four days prior to such meeting.

Records; adjournment. 4. The town, city or village clerk on such board of review shall be clerk thereof and shall keep an accurate record of all its proceedings. The board may adjourn from day to day or from time to time until its business is completed; provided that, if an adjournment be had for more than one day, a written notice shall be posted on the outer door of the place of meeting, stating to what time said meeting is adjourned.

Compensation. 5. The members of such board except in cities of the first class, shall receive such compensation as shall be fixed by resolution or ordinance of the town board, village board, or common council not exceeding, however, three dollars per day.

Length of session. 6. After the assessors shall have laid before the board of review their assessment roll of real estate with the sworn statements and valuations of personal property and bank stock, as provided by section 1061, the board of review shall remain in session one day from ten o'clock A. M. until four o'clock P. M. for taxpayers to ap-

pear and examine such assessment roll, sworn statements, and valuations and be heard in relation thereto; and upon reasonable cause being shown therefor, shall hold at least one adjourned session upon a subsequent day.

Special charters not affected. 7. The provisions of this section shall not be so construed as to alter, repeal, amend or modify the provisions of any city or village charter relating to the cases herein provided for.

This section relates to the organization, time and place of meeting, compensation, and procedure of boards of review. The section has been divided into paragraphs and the several provisions are so plain as to require no comment. The amendment of 1909, contained in paragraph 6, requires the board to remain in session one day for taxpayers to appear and be heard. It was held that a statute requiring boards of review to continue in session two days was mandatory that a taxpayer who was deprived of a hearing by an adjournment on the first day was not bound to pay the taxes assessed against him. *Auditor General v. Chandler*, 66 N. W. 482.

If adjournment is taken for more than one day written notice should be posted on the outer door of the place of meeting stating the time to which such adjournment was made. For a discussion of the powers and duties of boards of review, see note to section 1061.

Composition of board. A special village charter properly construed provided that the board of review should be constituted as such boards are constituted in towns and not as in other villages. A quorum being present and voting, the fact that the assessor was excused from voting did not invalidate the action of the board. *State v. Gaylord*, 73 Wis. 316.

The board is not required to take additional oaths as members thereof; the general oath of office is meant. *McIntyre v. White Creek*, 43 Wis. 620; *Powers v. Oshkosh*, 56 Id. 660.

A city charter created a board of review and also a board of equalization. The two boards were largely composed of the same officers, met at the same time and place and consulted together, but when they came to act each acted finally upon the matters legally submitted to it. Their action was held valid. *Cramer v. Stone*, 38 Wis. 259.

The duties of a board of review are quasi-judicial and courts have no jurisdiction to disturb its findings and determinations unless it is acting in bad faith, or outside its jurisdiction, or in intentional disregard of law. *Brown v. Oneida Co.*, 103 Wis. 149.

For composition of Board of Review in the city of Milwaukee, see section 1030m. 7, p. 35 Supra.

The taxpayer must make full disclosure of all his personal property before the board of review and answer all inquiries relating thereto or be barred from questioning the validity of the assessment in court. *State v. Williams*, 123 Wis. 73.

See this case also for general discussion of the duties and powers of boards of review.

Notice of the time, etc. Where a charter required ten days' notice of the time and place of meeting and only nine days' notice was given, held valid; and, if otherwise, it was cured by a provision that no error or informality should invalidate the tax. *Cramer v. Stone*, 38 Wis. 259. Such notice, followed by other proceedings, amounts to "due process of law." *Baldwin v. City*, 66 Wis. 171.

Where the parties interested appear before the board and are fully heard, without making any objection on the ground that legal notice was not given, the jurisdiction is complete, although proper notice was not given. *State v. Gaylord*, 73 Wis. 306.

Where a person makes no sworn statement to an assessor as to the value of his personal property, the value placed thereon by the assessor is prima facie correct and cannot be changed by the board of review except upon evidence. *The State ex rel Giroux vs. Lien*, 112 Wis. 282.

Statute directory. Sec. 1060 Stats. 1898, requiring the board of review to meet on the last Monday in June, and section 1064 providing that the assessor shall deliver the completed assessment roll to the clerk on or before the first Monday in August, are directory only, and a failure to comply literally therewith does not invalidate the action of such officers unless the rights of persons interested are thereby materially affected to their prejudice. *State v. Zillmann*, 121 Wis. 472.

Duties and powers of board; proceedings. SECTION 1061. 1. The assessors shall lay before the board of review their assessment roll of the real property and all the sworn statements made by others and valuations made by them of personal property and bank stock. The board shall, under their official oaths, carefully review and examine said roll and statement and all valuations of real and personal property and bank stock, and shall correct any errors in description of property or otherwise; and for that purpose they are hereby required to hear and examine any person or persons upon oath, who shall appear before them in relation to the assessment of any property upon said roll or in relation to any property omitted therein; and if it appear that any property has been valued by the assessor too high or too low, they shall increase or lessen the same to the true valuation according to the rules for valuing property prescribed in this chapter. They shall determine the correct value of any bank stock which has been valued in his statement thereof by an officer of the bank at one price and by the assessor at a different price.

Lowering assessment. 2. Any person who thinks the aggregate valuation of his personal property by the assessor too high, may appear and state to the board under oath the true aggregate valuation of all personal property upon which he is liable to taxation, and if the board shall be satisfied of the truth of such statement they shall take the valuation so fixed by him as the true aggregate valuation of his personal property. The board of review shall, when satisfied from the evidence taken that the assessor's valuation is too high or too low, lower or raise the same accordingly, whether the person assessed appear before them or not. The board may also place upon the roll any property they may know to be omitted, and assess the same to the person to whom in right it should be assessed.

Notice. 3. But they shall not raise any assessment nor assess any property not already on the roll unless the person assessed, if a resident of the town, city, or village, or if a nonresident, his agent, if there be one resident therein, or if neither, the possessor of the property assessed,

if any, shall have been duly notified of such intention in time to appear and be heard before the board in relation thereto; provided, the residence of such owner, agent or possessor be known to any member of said board.

Evidence. 4. Any person claiming any correction of the assessment may call witnesses to support the same, or to show that any property on the roll is assessed too high, or too low; and the attendance of witnesses and the production of books, inventories, schedules, papers, or documents may be compelled by subpœna issued by a justice of the peace or the clerk of the board.

Record. 5. The clerk shall keep a careful record of all changes made and valuations determined on by the board, and shall reduce to writing and preserve the examination and statements of every person and witness taken by the board.

Appearance before board of review necessary as to personal property. 6. No person shall be allowed in any action or proceeding to question the amount of valuation of personal property assessed to him unless in person or by agent he shall have first presented his objections thereto before the board of review of the district in which such assessment was made and in good faith presented evidence to such board in support of such objections and made full disclosure before said board, under oath, of all his personal property liable to assessment in such district and the value thereof, except when prevented from making such presentation and disclosure by omission of duty on the part of the assessor or of such board.

Subd. 6. Amended by Chap. 679, 1919.

Duties of board. This section does not contemplate that boards of review shall do over the work of the assessor or substitute their judgment for his. The assessor's valuation is presumed to be correct and must stand in the absence of evidence to the contrary. *State v. Lien* 108 Wis. 316; *State v. Thompson*, 151 Wis. 184; *State v. Williams* 160 Wis. 648. The duty of the board of review is to carefully examine the roll and statements submitted, for errors, omissions and improper valuations, and take the necessary steps to correct them. It may direct the assessor to correct mere errors in description or otherwise, but cannot place any additional property on the roll without notice nor change any valuations without sworn testimony produced before it for that purpose.

A board of review is not an assessing body, but is a quasi-judicial body required to hear evidence tending to show errors in the assessment, and to decide on such evidence whether or not the assessor's valuation is correct. The assessor's valuation is prima facie correct, and cannot be changed except upon evidence showing it to be erroneous. *State ex rel. v. Williams*, 160 Wis. 648.

No change of valuation without evidence. Boards of review are required to "examine upon oath" any person who shall appear before them in relation to the assessment or omission of property and to lower or raise the same "when satisfied from the evidence taken that the assessor's valuation is too high or too low." They are not limited in

this respect to instances of incorrect assessment brought up on complaint of taxpayers but may proceed upon their own motion to procure witnessess or other evidence necessary to correct the roll. But they cannot change any valuation without sworn testimony produced before them for that purpose, and then only in accordance with such evidence. Any change of valuation without evidence is a plain violation of official duty which may be set aside on certiorari. *Shove v. Manitowoc*, 57 Wis. 5; *State v. Lawler*, 103 Wis. 460; *State v. Fuldner*, 109 Wis. 56; *State v. Williams*, 123 Wis. 65, and other cases cited in note.

Referring to the clauses above quoted, it was held in case of *State v. Lawler*, 103 Wis. 460, that "the clear intent of the language used was to place it beyond the power of the board of review to change values without evidence and to require them to change in accordance with the evidence." In the case of *State v. Fuldner*, 109 Wis. 56, the court declared that, "in absence of evidence the board had no power to reduce valuations."

A mere opinion of the owner with reference to the value of personal property, unsupported by facts or circumstances and coupled with evasive answers as to the quantity and market value, does not nullify the valuation of an assessor. 149 Wis. 76. Idem.

Oral testimony. This section allows the board of review to receive oral testimony only. Ex parte affidavits cannot be considered. *State v. Lien*, 108 Wis. 282. Nor are depositions of property owners admissible. *State v. Hobe*, 124 Wis. 8. It was also decided in the last mentioned case that affidavit under section 1056 not sworn to before the assessor could not be considered.

Valuation by board of review. The valuation of property when there is evidence authorizing the board of review to act is governed by the same rules which control the action of assessors. The board is required to increase or lessen the valuation to the "true value according to the rules for valuing property prescribed in this chapter." The rule for valuing real estate is "the full value which could ordinarily be obtained therefor at private sale." Section 1052,. And the rule for valuing personal property is its "true cash value." Section 1055. The law is just as binding upon boards of review as upon assessors. No change of valuation at all can be made without evidence and when evidence is produced the change must be in accordance therewith.

The board of review cannot change the assessor's valuation without evidence.... *State ex rel. v. Klein*, 157, Wis. 308.

In proceedings before a board of review to determine the value of a sawmill, testimony as to what the property as an entirety and a going concern would ordinarily sell for at private sale, assuming that a buyer with the same opportunity for the use of the mill as the present owner was at hand and had the means to buy it, was held to be a better test of value than evidence of what the sawmill would be worth to dismantle and dispose of in part. *State v. Williams*, 123 Wis. 61.

The board need not, before receiving testimony under this section, give notice to persons likely to be affected. *State v. Wharton*, 117 Wis. 558; but failure to give notice before increasing an assessment is jurisdictional error. *State v. Sackett*, 117 Wis. 580.

Witnesses duly subpœnaed by or before boards of review who refuse to appear or testify are punishable for contempt under section 4066 of the statute, as amended by chapter 140, laws of 1911.

Assessors and perhaps members of boards of review are competent witnesses. See note to section 1062, post.

In addition to evidence showing that the assessor's valuation is not correct, the owner must make full disclosure under oath to the board of all his personal property liable to assessment and the value thereof.

Failing to do so, he will not be allowed to question the assessment in court. This provision of the statute was construed and emphatically approved in the case of *State v. Williams*, 123 Wis. 73.

Refusal to be sworn. When a person appearing before the board offered to make a statement of his debts outside of the taxing district, but refused to give a statement of debts within the district or be sworn to the same, held, that the board was justified in ignoring his statement. *State v. Cooper*, 59 Wis. 666.

The necessary absence of the town clerk during some of the days the board was in session and the fact that another person was authorized by the board to act and did act as their clerk, but without taking any part in their proceedings or voting on any question, does not affect the validity of the board's action so as to afford any equitable ground for relief from the payment of taxes. *Hixon v. Oneida Co.* 82 Wis. 515, 533.

Assessor to attend, testify, correct. SECTION 1062. The assessor shall attend without order or subpœna all hearings before the board of review and under oath submit to examination and fully disclose to said board such information as he may have touching his assessment and any other matters pertinent to the inquiry being made and shall receive the same compensation for such attendance as is allowed to the members of said board. He shall make all corrections to the assessment roll ordered by the board of review, and when any valuation of real property shall be changed he shall enter on the roll opposite the proper tract, in a separate column, the valuation fixed by the board. He shall also enter upon the assessment roll, in the proper place, the names of all persons found liable to taxation on personal property or bank stock, setting opposite such names respectively the aggregate valuation of such property, after deducting exemptions and making such corrections as the board may have ordered.

Assessors and members of board of review competent witnesses. The sentence of the above section requiring the assessor to attend the hearings of the board of review and disclose under oath such information as may be required relating to the assessment, and prescribing his compensation, was added by ch. 371, laws of 1907. Under this section as amended the assessor is a competent witness before the board of review. *State ex rel Hanna Dock Co. v. Willcuts*, 143 Wis. 449.

Even before the amendment the assessor could be sworn in support of but not to impeach his affidavit. *Marshall v. Benson*, 48 Wis. 558; *Plumer v. Supervisors*, 46 Wis. 163.

While the practice of calling members of boards of review to testify as to matters pending before them is not favored where other evidence is available, it is believed that they are competent witnesses and that their testimony may properly be taken when necessary to correct an unjust or unlawful assessment. The question has not been directly passed upon by the supreme court but the reasoning in the cases of *Starkweather v. Common Council*, 90 Wis. 612; *Wood v. Chamber of Commerce*, 119 Wis. 367; and *Cook v. Houser*, 122 Wis. 573, it would seem to sanction such testimony.

Equity will not relieve against taxes because the only record of the changes made by the board of review, other than the changes themselves, was made on loose sheets of paper, which, though filed in the clerk's office, were unsigned. *Hixon v. Oneida Co.* 82 Wis. 515, 534.

Affidavit of assessor. SECTION 1063. The assessor or assessors shall annex to the assessment roll, when completed, his or their affidavits, to be made and certified substantially in the following form,

STATE OF WISCONSIN. }
....County. } ss.

We, ...and.... ...., assessors for the....of....,in said county, do solemnly swear that the annexed assessment roll contains, as we verily believe, a complete and perfect entry and list of all real property liable to assessment for the present year in said ...., the name of each person therein owning or having in charge personal property liable to taxation; the name of each stockholder and the amount of his stock in each incorporated bank in said town or ward; a correct description of the separate parcels of real property assessed; that we have, as far as practicable, valued each parcel of real estate from an actual view of such parcel (but in towns exceeding one hundred and eight square miles this clause shall be "that we have valued each parcel of real estate from actual view, or from the best information we could practicably obtain, and all improved lands from actual view"); that we have, as far as practicable, personally viewed and inspected each article of personal property assessed by us; that the valuation of real property as set down in said roll is as determined by us or as corrected by the board of review; that the valuation of personal property and bank stock in said roll is as fixed by us or as finally fixed by the board of review; that each and every valuation of the property made by us is the just and equitable value thereof, as we verily believe.

Read to the affiant and subscribed and sworn to before me this.... day of....18..

....

No assessor shall be allowed in any court or place, by his oath or testimony, to contradict or impeach any affidavit or certificate made or signed by him as such assessor.

When assessor competent witness. The last sentence of this section prohibiting any assessor from contradicting or impeaching his certificate to an assessment roll is repealed by necessary implication by sections 1059 and 1062 as amended, insofar as the same would conflict with the performance of the duties imposed by the last mentioned sections. *State ex rel. vs. Willcuts*, 143 Wis. 449.

Assessor's oath. In several early decisions of the supreme court it was held that the failure of the assessor to make the oath or affidavit to the assessment roll required by this section would invalidate the tax for all purposes and defeat any attempt to collect the same. *Marsh v. Supervisors*, 42 Wis. 502; *Philleo v. Hiles*, 42 Wis. 527; *Scheibel v. Kochler*, 42 Wis. 291; *Plumer v. Supervisors*, 46 Wis. 163; *Marshall v. Benson*, 48 Wis. 558; *Paine v. Comstock*, 57 Wis. 159. The same rule was adopted by the Federal court in the case of *Briggs v. St. Croix Co.*, 20 Fed. 341 where it was said, "The want of the proper affidavit avoids the tax and all proceedings will be stayed until a reassessment can be made."

But these decisions have since been criticised and modified by the court in the cases of *Fifield v. Marinette Co.* 62 Wis. 532; *Bass v. Fond du Lac* 60 Wis. 516; Wis. *C. R. Co. v. Lincoln Co.* 67 Wis. 478. In the latter case it was held that "the failure of the assessor to sign or verify the roll does not render the assessment a nullity so that it can be said that no taxes have been assessed." And, again, in *Fifield v. Marinette Co.*, that "the want of such affidavit is not sufficient to show that the tax is unjust or inequitable and an action in equity to set aside the taxes on this ground will fail unless accompanied by an offer to pay such sum as is justly chargeable for taxes."

The absence of an affidavit is merely prima facie evidence of inequality, *Bass v. Fond du Lac Co.* 68 Wis. 516.

Present rule stated. As the law now stands, the rule seems to be that failure of the assessor to verify the assessment roll does not render a tax based thereon absolutely void but does make it prima facie unequal and unjust. A tax based on an unverified roll cannot be set aside on that ground alone in an equity action without showing that it is in fact unjust and inequitable. But in the absence of the affidavit, the burden is shifted to the municipality to prove it just and equitable. It is probable that such a tax would be set aside and defeated in strict law actions like certiorari and perhaps in ejectment or trespass under a tax deed based on an unverified assessment. It is highly important, therefore, that the assessor should sign and verify the roll as the statute requires. Boards of review and town, city and village clerks are cautioned to see that the roll is properly verified before it passes from their hands and that all other formal steps in imposing the tax have been complied with.

EQUALIZATION—JOINT SCHOOL DISTRICTS

Joint school districts; assessments equalized only on petition; forfeits for nonattendance. SECTION 40.07 [471.] 1. The relative valuation of taxable property in the several parts of any joint school district or of any joint high school district, shall not be equalized except as herein provided. At any time prior to the fifteenth day of October of any year any three freeholders resident in that part of any town, city or village forming a part of any joint school district, or forming a part of any high school district, or if the number of freeholders in such part of any town, city or village be less than three then all of such freeholders, may file with the clerk of such district a petition praying for an equalization of the relative valuation of taxable property in the several parts of such district. The clerk shall thereupon and prior to October twenty-fifth of such year notify in writing the assessor of every town, city and village in part embraced in such district to meet as provided in subsection 2 of this section.

When to meet. 2. The said assessors shall meet at the district schoolhouse with their respective assessment rolls at the time designated in such notice for the purpose of comparing and investigating the assessed valuation of the taxable property in the several parts of such district separated by town, city or village lines and shall determine whether the assessed valuation of such property on the assessment rolls be just or not.

Determination; record. 3. If considered unjust, they shall determine the relative aggregate valuation of said property in the parts of the district in the several towns, cities or villages comprising it and the proportion of district taxes to be levied upon the property in each of the several parts. If necessary, the assessors may view and inspect the taxable property in the different parts of the district and may examine the owners and other persons under oath as to the value thereof. The school district clerk shall attend such meeting and keep a record of the proceedings. A majority of such assessors shall constitute a quorum for the performance of the duties prescribed in this section.

Adjournments. 4. If any assessor shall be absent from such meeting in attendance upon a like meeting in some other joint district, and shall give information of the fact to such clerk, or if for other reasons there shall be no quorum of assessors, the meeting shall be adjourned to such time as may be necessary to enable all or a majority of such assessors to be present, and in such case the clerk shall give notice of such adjournment to each assessor not then present in time to enable him to attend such adjourned meeting. Further adjournments may be taken if necessary, until the duties imposed by this section shall have been performed; and if for any reason there shall be failure to perform such duties without adjournment to a fixed time, the clerk shall call another meeting at a time fixed by him; provided, that final action by said assessors under this section shall be taken not later than the first day of November in the same year. The town, city and village clerks shall allow the assessors to take and use the assessment rolls in the discharge of their duties under this section.

Disagreements. 5. If the assessors cannot agree, they shall call to their aid the assessor of incomes of the county, whose vote shall decide the controversy. The determination when made shall be certified in writing to the district clerk.

Penalty. 6. If any assessor or other officer shall refuse or neglect to perform the duties hereby imposed, or to act when called upon as herein provided, he shall forfeit not less than ten nor more than one hundred dollars.

Delivery of roll. SECTION 1064. The assessor shall, on or before the first Monday in August annually, deliver the assessment roll so completed and all the sworn statements and valuations of personal property to the clerk of the town, city or village, who shall file and preserve the same in his office; provided, that in cities of the first class, whether organized under general or special charter, the assessment rolls, after the tax roll has been completed and compared with such assessment rolls, be delivered by the city clerk to the tax commissioner or other head of the assessment department of such city, by whatsoever name he may be designated, who shall file and preserve the

same in his office. It shall be unnecessary for such tax commissioner or other head of the assessment department in such cities of the first class to make or keep in his office any copy of said assessment roll.

The assessment roll is deemed to be completed except for the correction of mistakes and clerical errors on the 1st Monday in August when it is required to be delivered to the clerk for filing under this section and the subsequent levy of taxes must be considered as relating back to that date. Lands deeded to the state prior to the first Monday in August in any year are exempt from taxation for that year, but lands to which the state becomes the owner after that date are taxable for that year. *Petition of Wausau Investment Co.* 163 Wis. 283.

The provision that the assessment roll should be delivered to the clerk on or before the first Monday in August is directory only and a departure from the letter of the statute will not subject the assessor to a penalty unless it be shown that the rights of the parties interested were thereby affected to their predjudice. *State v. Zillman*, 121 Wis. 472.

Assessment review and tax roll in Milwaukee. Section 1064a. 1. The board of review in all cities of the first class whether organized under general or special charter, after they shall have examined, corrected and completed the assessment roll of said city and within the time prescribed by law, shall deliver the same to the tax commissioner, who shall thereupon re-examine and perfect the same and make out therefrom a complete tax roll in the manner and form provided by law. All laws applicable to any such city relating to the making of such tax rolls shall apply to the making of the tax roll by said tax commissioner, except that the work of making said rolls shall be performed by the assessors and such other employes in the tax commissioner's office as the tax commissioner shall designate. After the completion of said tax roll in the manner provided by law, the tax commissoner shall annex a warrant in the form prescribed by law and signed by him and deliver the tax roll and warrant to the city treasurer of such city on the second Monday of December in each year.

2. The county clerk of any county in which there shall be a city of the first class shall deliver his certificate of apportionment of taxes and statement of the names of persons in said city subject to an income tax to the tax commissioner instead of the city clerk of such city.

This section applies to the city of Milwaukee only. In all other municipalities of the state, on completion of the assessment roll, the assessor is required to deliver the same to the clerk who is required to compute the tax under section 1079. Post.

Clerks to examine and correct rolls. Section 1065. Upon receiving such assessment roll the said clerk shall carefully examine it. He shall correct all double assessments, imperfect descriptions and other errors apparent upon the face of the roll, and strike off all parcels of real property not liable to taxation. He shall add to the roll any parcel of real property omitted by the assessors and immediately

notify them thereof; and such assessors shall forthwith view and value the same and certify such valuation to said clerk, who shall enter it upon the roll, and such valuation shall be final. To enable such clerk to properly correct defective descriptions he may call to his aid, when necessary, the county surveyor, whose fees for the services rendered shall be paid by the town, city or village.

This section requires the clerk to carefully examine the assessment roll on receipt of the same and make the corrections specified. Aside from correcting double assessments, imperfect descriptions and other errors apparent upon the face of the roll, he is authorized to strike off parcels of real estate not liable to taxation and to add real estate omitted. He is not authorized to add omitted personal property, but such property may be assessed the following year under section 1059.

The clerk should also note whether the roll has been signed and verified by the assessor and is otherwise in the form prescribed by law.

Statement to county clerk. SECTION 1066. Upon the correction and completion of the assessment roll, as provided in the preceding section, the said clerks shall ascertain and, on or before the fourth Monday in August, transmit to the county clerk a detailed statement of the aggregate of each of the several items specified in section 1050, and the valuation of bank stock, with a statement of the number of acres of land and the aggregate value thereof, and the aggregate value of all city and village lots as appears from the assessment roll. Every county clerk shall, at the expense of the county, annually procure and furnish to each town, city and village clerk blanks for such statements, which blanks shall be in the following form:

Statement

Required by section 1066 of the statutes of 1898, showing the aggregate number and value of the several items of personal and real property appearing upon the assessment rolls of the .... of ...., in the county of ...., state of Wisconsin:

Description of Property	Aggregate number	Aggregate value
1. Horses of all ages		$
2. Neat cattle of all ages		
3. Mules and asses of all ages		
4. Sheep and lambs		
5. Swine		
6. Wagons, carriages and sleighs		
7. Gold and silver watches		
8. Pianos, organs and melodeons		
9. Value of bank stock		
10. Value of merchants and manufacturers' stock		
11. Amount of moneys, accounts, bonds, credits, notes and mortgages		
12. Value of leaf tobacco		
13. Value of logs, timber, lumber, ties, poles and posts, not manufacturers' stock		
14. Value of steam and other vessels		
15. Value of real and personal property and franchises of water and light companies		
16. Number and value of all bicycles		
17. Value of all other personal property		
18. Total value of all personal property		$
19. Number of acres of land and value thereof		$
20. Aggregate value of city and village lots		
21. Total value of real estate		$

...., Wis., ..., 18...

I hereby certify the foregoing statement to be correct, as appears from the assessment rolls above referred to, which are now on file in this office.

....,

.... Clerk.

The following section requires the county clerks to make abstracts of the several statements reported to them by local clerks in their respective counties to the tax commission on or before the close of the calendar year. Forms for this purpose are furnished by the tax commission. Local clerks are also required to send abstracts of their statements to the county clerks to the tax commission on forms prescribed for that purpose. Sections 1004 and 1004b.

Abstracts for tax commission. SECTION 1067. Each county clerk, after the receipt of such statement, shall make an abstract of the same and transmit it to the tax commission on or before the thirty-first day of December.

See note to preceding section.

Special messenger. SECTION 1068. Whenever any town, city or village clerk shall have failed to transmit any such statement within

the time fixed as aforesaid, the county clerk shall send a messenger therefor, who shall be paid and the expenses charged back as provided in section 1015; and whenever any county clerk shall have failed to transmit any such abstract, within the time fixed as aforesaid, the tax commission may send a messenger therefor, who shall be paid and the expenses therefor charged back as provided in section 1016.

Restoration of lost assessment and tax rolls. SECTION 1068*a*. Whenever the assessment roll of any assessment district shall be lost or destroyed before the second Monday of November in any year and before the tax roll therefrom has been completed the assessor of such district shall immediately prepare a new roll and as soon thereafter as practicable make a new assessment of the property in his district. If the board of review for such district shall have adjourned without day before such new assessment is completed such board shall again meet at a time fixed by the clerk of the town, city or village, not later than the fourth Monday in November, and like proceedings shall be had, as near as may be, in reference to such new assessment and assessment roll as in case of other assessments, and such clerk shall give notice of the time and place of such meeting of the board of review as is provided in section 1060. Such new assessment and assessment roll shall be deemed the assessment and assessment roll of such assessment district to all intents and purpose. In case the assessor shall fail to make such new assessment or the board of review shall fail to meet and review the same, or any assessment roll is lost or destroyed after the second Monday in November in any year and before the tax roll therefrom is completed, or both the assessment roll and tax roll are lost or destroyed, then the county clerk shall make out and deliver a tax roll in the manner and with like effect as provided in section 1084.

SECTION 1068*b*. Whenever a tax roll in any town, city or village shall be lost or destroyed before it has been returned by the treasurer or sheriff holding the same, a new roll shall be prepared in like manner and with like warrant as the first, and delivered to such treasurer or sheriff, who shall complete the collection of the taxes and return such new tax roll in the manner provided for the original tax roll.

CHAPTER VII

STATE AND COUNTY APPORTIONMENT; APPEALS; TAX ROLL; ASSESSORS OF INCOMES

(Sections 1069 to 1087b inc.)

State valuation and general assessment. SECTION 1069. 1. The tax commission shall commence on the third Wednesday of May in each year, and before the first day of September of the same year shall complete, the valuation of the property of the state. From all the sources of information accessible to it the commission shall determine and assess the relative value of all property subject to taxation in each county. It shall set down in a list of all the counties, opposite to the name of each county, the valuation thereof so determined by it, which shall be the full value according to its best judgment. The list so prepared shall be certified by said commission or a majority of its members, and its secretary as the state assessment made by the commission, and be delivered to the secretary of state. In any case where the commission, through mistake or inadvertence has assessed to any county a greater or less valuation for any year than should have been assessed to such county, it shall correct such error by adding to or subtracting from (as the case may be) the valuation of such county as determined by it at the next succeeding state assessment, the amount omitted from or added to the true valuation of such county in the former state assessment in consequence of such error, and the result shall be taken as the true valuation of such county for the latter year and a final correction of such error.

Complaint; attendance of witnesses. 2. The commission shall have the power to make such rules, orders and regulations for making and filing complaints by counties, the attendance of witnesses, the production of books, records and papers and the mode of procedure as may be deemed necessary, not inconsistent with the laws of the state.

Fees and expenses. 3. The commission shall have authority to direct that the fees for the attendance of witnesses and officers and other expenses for evidence shall be paid by the county making complaint to the commission which is determined adversely to such county, as justice may require, and when such costs and fees are so directed to be paid by any county the amount thereof shall be certified to the

secretary of state, and by him apportioned to such county with the state taxes and be levied and collected upon the property of said county with said state taxes.

An assessment of the general property of the state is made by the tax commission under this section every year, primarily based upon the five year average of real estate sales and the estimates of true value of personal property made by assessors of incomes in their respective districts. Differences in the valuations of the same class of property in different counties and by different assessors of incomes are sought to be harmonized and reduced to the same basis by the tax commission on information derived from all available sources. For this purpose, each county is assessed as a unit and the state tax is apportioned accordingly.

State assessments. The aggregate assessment of the general property of the state for each of the last five years is as follows:

1915	$3,299,731,408
1916	3,426,797,220
1917	3,607,470,442
1918	3,846,263,744
1919	4,068,268,534

Apportionment of funds in treasury. SECTION 1069a. Whenever in the opinion of the governor, secretary of state and state treasurer, or a majority of them, the public interest requires it, they may apply the surplus in the treasury, or so much thereof as may be by them deemed proper, as a portion of the state tax levy in each year, and the balance thereof, after deducting the amount above provided for, shall be apportioned in the same manner as now provided for under the provisions of section 1070. For the purpose of ascertaining the financial condition of the state at the end of each calendar year the governor is authorized to employ such expert accountants and other assistants as he shall deem necessary for that purpose.

The taxes paid to the state by railroads and other public service companies, insurance companies, automobile taxes, and receipts from the income and inheritance taxes are generally sufficient to pay all the expenses of the state government, and accordingly only a nominal levy of one hundred dollars has been made for state purposes in recent years.

Method of apportionment. SECTION 1070. The secretary of state shall annually apportion the state tax levied for the year and all other taxes which he is directed by law to levy as or in the manner of a state tax among the several counties according and in proportion to the relative valuation of each county to the aggregate valuation of the whole state; and shall carry out opposite the name of each county on the list aforesaid the amount of such taxes apportioned thereto and thereupon; and on or before the fourth Monday of October in each year he shall certify to the county clerk of each county the amount of such taxes apportioned to and levied upon his county, and all other special charges which he is required by any law to make in any year to any such county, to be collected with the state tax. He shall then

charge to each county the whole amount of such taxes and charges so assessed, and the same shall be paid into the state treasury as provided by law.

The apportionment of state taxes required by this section is made among several counties in proportion to the assessed valuation of each as fixed by the tax commission under Section 1069.

Appropriations in excess of levy. Section 1071. Whenever it shall appear before the apportionment and certification of such state tax, as above prescribed, that the appropriations made by the legislature and existing laws exceed the amount of state tax levied to meet the expenses of the year for which such tax was levied, the secretary of state shall levy and apportion such additional amount as may be necessary, in connection with the amount provided by law to be levied, to meet all authorized demands upon the state treasury up to the time when the succeeding state tax will be due and payable.

State tax levy. Section 1071m. 1. To provide for the estimated expenses of the state of Wisconsin for the present fiscal year in excess of the income otherwise applicable thereto a state tax of one hundred dollars is hereby levied upon the taxable property of the state for the year 1919, in addition to all other taxes and charges authorized by existing laws for such year, such levying not to be increased or diminished by any executive or administrative officer, and the same shall be apportioned by the secretary of state to the several counties, and be apportioned according to law by the several county clerks of such counties to the taxing districts therein and be collected and accounted for according to law.

Section 2. To provide for the estimated expenses of the state of Wisconsin for the succeeding fiscal year, in excess of the income otherwise applicable thereto, a state tax of one hundred dollars is hereby levied upon the taxable property of the state for the year 1920 in addition to all other taxes and charges authorized by existing laws for such year, such levy not to be increased or diminished by any executive or administrative officer, and the same shall be apportioned by the secretary of state to the several counties, and be apportioned according to law by the several county clerks of such counties to the taxing districts therein and be collected and accounted for according to law.

Chap. 637, 1919.

Statement of additional tax. Section 1072. In every such case the secretary of state shall make a statement showing the amount of additional tax levied as above provided and the estimates upon which the same was based, which he shall place on record in his office and include in and publish with his annual [biennial] report to the governor.

COUNTY APPORTIONMENT.

How made. SECTION 1073. The county clerk of each county shall annually, before the second Tuesday of November, prepare a statement of the latest statistics of population and such other statistical information as he may have, and lay the same, together with the statements received during the year from the several town, city and village clerks in pursuance of section 1066, before the county board at their annual meeting in November. The county board shall, at such meeting, carefully examine all such statements and determine and assess the relative value of all the taxable property in each town, city and village which collects taxes independently in their county. They shall set down in a list of the towns, cities and such villages, opposite the name of each, the value thereof so determined by them, which shall be the full value according to their best judgment. The list so prepared shall be certified to by the chairman and clerk of said board as the county assessment made by said board, and said clerk shall file the same in his office and record it in a book therefor.

Section 1087b of the statutes requires assessors of incomes to prepare a tabulated statement of statistical data relating to the assessment and true value of taxable property in the several assessment districts of their counties and file the same with the county clerk for the use of the county board in making the equalization prescribed by this section. In recent years county equalizations have generally been made on the basis of these reports.

The failure to make a list of the towns in the county with valuation set opposite as fixed by the board is not ground for equitable relief from the taxes levied,—a resolution levying a tax upon the property of the county having been adopted by the board and signed by all its members, filed with and recorded by the clerk in the record of the board's proceedings. *Hixon v. Oneida Co.*, 82 Wis. 515, 534.

County tax rate; maximum, one per cent. SECTION 1074. 1. The county board shall also, at such meeting, determine by resolution the amount of taxes to be levied in their county for county purposes for the year, and also the amount to be raised by tax in each town for the support of common schools for the ensuing year, which shall not in any town be less than the amount apportioned to such town in the last apportionment of the income of the school fund; and by separate resolution adopted by majority of the members of the board not prohibited from voting thereon by section 3905, determine the amount of tax to be levied to pay the compensation and allowances of the county superintendents of schools and designate therein the cities exempt from taxation therefor.

2. The total amount of county taxes assessed, levied and carried out against the taxable property of any county in any one year shall not exceed in the whole one per centum of the total valuation of said county for the preceding year as fixed by the state board of equalization, excepting in so far as a larger per centum may be necessary in order to meet indebtedness incurred prior to the passage and publication of this act.

The word "town" in this section is used in the broad sense of a taxing district whether town, city or village. *State ex rel. Hunter*, 119 Wis. 450.

The determination by the county board of an amount to be raised by tax in a city or other taxing district for the support of schools therein is a levy of the tax since sections 1076 and 1079 leave nothing to be done thereafter to raise the amount except the performance of purely ministerial duties.

But such tax though levied by the county board is not a tax for county purposes, but is a town, city or village tax as the case may be. *State ex rel. Hunter*, Supra.

Omitted tax. SECTION 1075. Whenever the county board of any county shall fail to apportion against any town, city or village thereof in any year any state, county or school tax or any part thereof properly chargeable thereto, such county board shall, in any succeeding year, apportion such taxes against such town, city or village and add the proper amount thereof to the amount of the current annual tax then apportioned thereto.

Apportionment to towns. SECTION 1076. 1. The county clerk shall apportion the county tax and the whole amount of state taxes and charges levied upon his county, as certified by the secretary of the state, among the several towns, cities and such villages as aforesaid therein, according and in proportion to the relative valuation thereof to the aggregate valuation of the whole county; and shall carry out in the record book aforesaid, opposite to the name of each in separate columns, the amount of state taxes and charges and the amount of county taxes so apportioned thereto, and also the amount to be raised as aforesaid for the support of common schools therein, and the amount of all other special taxes or charges apportioned or ordered, or which he is required by any law to make in any year to any such town, city or village, to be collected with such annual taxes; and within ten days after the assessment of values by the county board he shall certify to the clerk of, and charge to, each town, city and such village excepting in cities of the first class, the amount of each and all such taxes so apportioned to and levied upon the same, and shall, at the same time, file with the county treasurer a certified copy of the apportionment so certified by him to each town, village and city clerk.

2. The county clerk shall certify in a similar manner to the tax commissioner of each city of the first class located within the limits of the county.

The apportionment required by ths section is made according to the valuation of taxable property in each of the several assessment districts as fixed and determined by the county board under section 1073.

Unpaid taxes. SECTION 1077. 1. Each county clerk shall also, at the time of certifying such taxes, return to the clerk of each town, city and such village, excepting cities of the first class a list of all the tracts of land therein upon which the taxes for the preceding year remain unpaid.

2. The county clerk shall make returns in a similar manner to the tax commissioner of each city of the first class located within the limits of the county.

EQUALIZATION BY TAX COMMISSION.

Review and appeal. SECTION 1077*a*. The assessment and determination of the relative value of taxable property in the several assessment districts of any county made by the county board under the provisions of section 1073 of the statutes may be reviewed, and a redetermination of the value of such property may be made, by the tax commission upon appeal from the determination of such county board to said commission on behalf of any town, city or village in such county. Such appeal shall be taken and such review and redetermination shall be made in the manner provided in sections 1077*b* to 1077*l*, inclusive, of the statutes and under such rules and regulations governing the procedure therein, not inconsistent with law, as may be prescribed by said commission.

Sections 1077a to 1077L were created by section 474 of the laws of 1905 and provide for appeals to the tax commission from equalizations made by county boards. Prior to the adoption of this chapter, county equalizations were reviewed by commissioners appointed by the circuit court on complaint of the aggrieved districts.

The power to equalize taxes in quasi judicial, not legislative and these statutes are valid, notwithstanding that no provision is made for notice to taxpayers. The board acts on municipalities and not on the taxpayer, and consequently, the statute does not deny the equal protection of the laws. *Foster v. Rouce*, 128 Wis. 326.

Authorization of appeals. SECTION 1077b. To authorize such appeal an order or resolution directing the same to be taken shall be passed or adopted by the mayor and common council of the city, president and trustees of the village or board of supervisors of the town, in whose behalf such appeal is to be taken, at a lawful meeting of such governing body. When an appeal shall have been authorized the prosecution thereof shall be in charge of the chairman of the town, mayor of the city or president of the village in behalf of which the appeal is to be taken, unless otherwise directed by the body authorizing the appeal. The officers or committee in charge of such appeal may employ attorneys to conduct the same. After authorizing an appeal as provided above, any two or more of the towns, cities and villages in the same county may join in taking and prosecuting such appeal.

In reviewing the action of a county board under sections 1077a to 1077L the tax commission acts as a quasi-judicial tribunal with specified procedure and the mandatory requirements must be substantially followed. *State ex rel. v. Haugen*, 160 Wis. 494.

Form of appeal. SECTION 1077c. To accomplish such appeal there shall be filed in the office of the county clerk, within four months after the determination of the county board to be reviewed upon such appeal, a declaration in writing which shall set forth:

(1) That the town, city or village, naming the same, in whose behalf such review and redetermination is sought, appeals to the tax commission from the determination made by the county board under the provisions of said section 1073, specifying the date of such determination.

(2) Whether such appeal is for the purpose of obtaining a review and redetermination of the valuation of property in all the assessment districts of the county or of property in particular districts only, therein specified.

(3) Whether review and redetermination is desired as to real estate, or as to personal property, or both.

(4) That such appeal has been authorized by an order or resolution of the mayor and common council of the city, president and trustees of the village or board of supervisors of the town, city or village in whose behalf such appeal is taken.

(5) A plain and concise statement, without unnecessary repetition, of the facts constituting the grievance sought to be remedied upon such appeal.

The declaration shall be verified by the affidavit of the chairman of the town, mayor of the city or president of the village in whose behalf the appeal is taken, or by a member of the governing body thereof authorizing such appeal, in the manner that pleadings in courts of record may be verified. When two or more municipalities join in taking such appeal the verification may be made by the proper officer of any one of them.

The requirements of this section as to the time within which an appeal must be taken, the county clerk's return be made, and the final decision rendered, are directory. Delay beyond the times specified does not divest the commission of jurisdiction. *State ex rel. Baker v. Haugen*, 164 Wis. 443.

Return. SECTION 1077d. Upon the filing of such declaration, the county clerk without delay shall prepare a certified copy thereof, together with a certified copy of the determination of the county board from which such appeal is taken and of the record of the proceedings of the board in relation thereto, and transmit such copies to the tax commission. Upon receipt of such copies said commission shall make an order fixing a time and place for a preliminary hearing upon such appeal and shall transmit an attested copy of such order to such county clerk in time for giving the notice hereinafter required. Upon receipt of such order, said clerk, at least twenty days before the time fixed for such hearing shall transmit by mail to each member of the county board of such county a notice stating that such appeal has been taken, naming the municipality or municipalities in whose behalf the same is taken, and the time and place of such preliminary hearing. He shall file in his office a copy of such notice with his affidavit attached stating the fact and time of mailing the same to said members, and shall transmit to the tax commission a certified copy of such notice and affidavit.

Appearances; attorneys. SECTION 1077e. After the taking of such appeal, and not later than the time fixed for such preliminary hearing, unless such time be enlarged by order of the tax commission, any town, city or village may cause an appearance to be entered in its behalf before said commission in support of such appeal and uniting with the appellant for the relief demanded; and by verified petition or statement showing grounds therefor may apply for other or further review and redetermination than that demanded in the declaration on such appeal. Within the like time any town, city or village in such county may in like manner have its appearance entered in opposition to such appeal and to the relief demanded. Such appearances shall be authorized in the manner for authorizing an appeal as provided in section 1077b. When so authorized the interests of the town, city or village authorizing the same shall be in charge of the chairman, mayor or president thereof unless otherwise directed by the body authorizing such appearance; and attorneys may be employed in that behalf. In such appearances any two or more of the towns, cities and villages of said county may join if united in support of or in opposition to such appeal.

Hearing. SECTION 1077f. At the time fixed for such preliminary hearing, or at the time to which the same may be adjourned, the tax commission shall determine whether such appeal shall be entertained or dismissed. For that purpose they shall consider such sworn statements as may be filed and such testimony and arguments as may be presented within such reasonable time as the commission may fix for such presentation. If satisfied that no substantial injustice has been done in the county assessment appealed from, the commission in its discretion may dismiss such appeal. If the appeal be not dismissed, the commission, at such preliminary hearing or at the time to which it may be adjourned, shall make up the issues between the parties to such appeal and ascertain whether the review and redetermination sought by such appeal shall extend to all or to a part only of the towns, cities and villages in such county, whether to real estate or personal property or to all taxable property therein; and for that purpose the commission may require further statements in the nature of pleadings to be filed and may cause any statement filed, serving as a pleading, to be amended or made more definite and certain.

The parties in interest in a review under this section are entitled to an opportunity to hear the evidence produced, to oppose it with evidence, to be heard by counsel and to have the controversy determined upon the evidence. The term "commission" means the commission, not a single member of it, or its secretary, or any employe. At least a quorum must participate in the hearing and determination. *State ex rel. v. Haugen*, 160 Wis. 494.

Reassessment. SECTION 1077g. The commission shall then proceed to review and redetermine the value of property in such county in accordance with the issues as ascertained and made up under the provisions of the preceding section. They shall have authority in their

discretion to include in such review and redetermination all of the taxable property in said county and to extend the same beyond the issues as made up on the preliminary hearing, if at any time during the progress of their investigations they shall be satisfied that such course is necessary in order to accomplish substantial justice and to secure relative equality as between all the assessment districts in such county. They shall make careful investigation of the quantity and value of taxable property in the several assessment districts to which such review and redetermination shall extend. For that purpose the commission may employ such experts and other assistants as may be necessary, and fix their compensation. In making such investigations the commission, the members thereof, and all persons employed therein by the commission shall have and possess all the power and authority possessed by assessors so far as applicable, including authority to administer oaths and to examine property owners and witnesses under oath as to the quantity and value of property subject to taxation belonging to any person or within any district to which the investigation shall extend.

Under secs. 1077*a* to 1077*L*. Stats., the tax commission has very broad powers in respect to ascertaining the value of the different kinds of property in the taxing districts. Statistics of recorded sales of real estate and of the assessed valuation of lands included in such sales, collected and compiled pursuant to secs. 1007–1009, Stats., and all other information provided for by statutes respecting valuations of property, may be used by the commission in the performance of its duties; and expert knowledge acquired by it may be applied to the facts in evidence in reaching its determination. *State ex rel. Baker v. Haugen*, 164 Wis. 443.

Local hearings; how had. SECTION 1077h. The commission shall have authority in their discretion at any time before their final determination to appoint a time and place within such county at which they will hear evidence and arguments relevant to the matters under consideration upon such appeal. The time to be devoted to such hearings may be limited as the commission in their discretion shall direct. At least ten days before the time fixed for such hearings, the commission shall cause notice thereof to be mailed to the county clerk and to the attorney or other representative of each town, city and village in whose behalf an appearance has been entered in the matter of such appeal.

Subpoenas; contempts; perjury. SECTION 1077i. The tax commission and each of the members thereof shall have authority to issue subpœnas requiring the attendance of witnesses to produce books and papers and to give testimony at such times and places as may be designated therein. Witnesses summoned at the instance of such commission or any of its members shall be compensated at the rates provided by law for witnesses in courts of record, the same to be audited and paid the same as other claims against the state, upon the certificate of said commission. If any person shall disobey any subpœna or refuse to be sworn or to make affirmation or to testify when lawfully required so to do under any provision of law he may be pro-

ceeded against for contempt as provided in section 4066 of the statutes. If any property owner or other person shall make any false statement to said commission or to any member thereof or to any person employed by them upon any matter under investigation he shall be subject to all the forfeitures and penalties imposed by law for false statements to assessors and boards of review.

Decision. SECTION 1077j. The tax commission, within four months from the making up of the issues upon the preliminary hearing, shall make its determination upon such appeal and file a certificate thereof signed by the members or a majority of the members of such commission in the office of the county clerk. In such determination and certificate the commission shall set forth the relative value of the taxable property in each town, city and village of such county as found by them, and what sum, if any, shall be added to or deducted from the aggregate value of taxable property in each as fixed in the determination of the county board from which such appeal was taken in order to produce a relatively just and equitable county assessment. Such determination shall be final and conclusive.

The provision of this section requiring the tax commission to make its determination within four months from the making up of the issues, and all other provisions of sections 1077d to 1077j are directory and a failure of the commission to determine the matter speedily, where such delay was occasioned by legal proceedings, was held not to divest it of jurisdiction. *State ex rel. Baker v. Haugen*, 164 Wis. 443.

Effect of decision. SECTION 1077k. The determination of the tax commission shall not affect the validity of taxes apportioned in accordance with the county assessment from which such appeal was taken; but if it shall be determined upon such appeal that such county assessment is relatively unequal, such inequality shall be remedied and compensated in the apportionment of state and county taxes in such county next following the determination of said commission in the following manner: Each town, city and village whose valuation in such county assessment was determined by said commission to be relatively too high shall be credited a sum equal to the amount of taxes charged to it upon such unequal assessment in excess of the amount equitably chargeable thereto according to the determination of the tax commission; and each town, city and village whose valuation in such county assessment was determined by said commission to be relatively too low shall be charged, in addition to all other taxes, a sum equal to the difference between the amount charged thereto upon such unequal assessment and the amount which should have been charged thereto according to the determination of the tax commission.

Expenses; apportionment. SECTION 1077l. The tax commission shall transmit to the county clerk with their determination on such appeal a statement of all expenses incurred therein by or at the instance of the commission, which shall include the actual expenses of

the members of the commission, the compensation and actual expenses of all persons employed by them and the fees of officers employed and witnesses summoned at their instance. A duplicate of such statement shall be filed in the office of the secretary of state. Such expenses shall be audited upon the certificate of the commission, and paid out of the state treasury, in the first instance, as other claims against the state are audited and paid. The amount of such expenses shall be a special charge against such county and shall be included in the next apportionment and certification of state taxes and charges, and collected from such county, as other special charges are certified and collected. Unless otherwise directed by the commission in their determination upon such appeal, the county clerk, in the next apportionment of state and county taxes, shall apportion the amount of such special charges to and among the towns, cities and villages in such county whose relative valuations were increased in the determination of the commission in proportion to the amount of such increase in each of them respectively. The apportionment of such expenses shall be set forth in the determination of the commission. The amount so apportioned to each such town, city and village shall be charged upon its tax roll and shall be collected and paid over to the county treasurer as other state taxes and special charges are collected and paid.

THE TAX ROLL.

How made. SECTION 1078. From the assessment roll when so corrected, the town clerk (and the clerk of each city or such village as aforesaid, where a different course is not directed by its charter) shall make out in a book to be called a tax roll, a complete list of all the taxable real property therein arranged, except as herein directed in regular order as to lots and blocks and sections and parts of sections, by the proper corrected descriptions and having entered opposite in separate columns the name of the person to whom assessed before, and the valuation thereof, ascertained as aforesaid, after such description, and also a complete alphabetical list of all persons in his town having any taxable personal property, with the aggregate valuation of such property ascertained as aforesaid, and the number of the school district in which it is subject to taxation set opposite in separate columns. Whenever the property situate in an incorporated village or unincorporated village, the limits of which have been designated by the town board is embraced in a town tax roll the list of the real property and of persons taxable for personal property as aforesaid shall be entered in a continuous part of the roll and the valuations be separately footed. Public lands sold and not patented and lands mortgaged to the state shall be separately entered under a proper heading.

A "tax roll" means the roll in proper form to warrant the treasurer in enforcing the tax. *Babcock v. Beaver Creek*, 64 Wis. 601. Tax rolls are the original extensions of the levies made by the proper authorities and include state, county, town, and school taxes. *Smith v. Scully*,

66 Kansas 139. The making of the tax roll or list in accordance with the directions of the statute is ordinarily an essential prerequsite to the valid enforcement of the taxes entered thereon. 37 Cyc. 1046. *Baker v. Weber*, 102 Maine. *People v. Wells*, 178 New York.

Except as to the corrections which the clerk is expressly authorized to make by Sections 1065, 1085, and 1085a, he has no authority to change the assessment roll as certified by the assessor and board of review. His powers are purely ministerial and it is his duty to compute the tax according to the roll so certified. He is not permitted to question the valuations appearing on the roll nor the regularity of the steps in making the same either by the assessor or board of review. *Attorney General v. Erickson*, 170 N. W. Rep. 958.

Taxes are not "levied" until extended upon the tax roll, and are not a lien until then. *Spear v. Door Co.*, 65 Wis. 298.

Calculation and statement of taxes. SECTION 1079. 1. Upon receipt of the certificate of the apportionment from the county clerk each town and village clerk in counties containing a population of more than three hundred thousand shall, upon a uniform percentage, calculate and carry out in one item opposite to each valuation in the tax roll the amount required to be raised upon such valuation to realize in his town the whole amount of state, county, school and other taxes so certified, together with such town and other local taxes, except taxes to pay judgments, as are to be levied uniformly upon all the taxable property in the town; and all other taxes, if any, including taxes to pay judgments, in separate columns opposite the valuation of the property to be charged.

2. Under the head of "taxes unpaid for previous year" he shall enter opposite each tract of land so returned to him as aforesaid by the county clerk the year for which such tax remains unpaid. He shall enter upon said roll a statement showing the several amounts of taxes levied upon said town or any part thereof and for what purpose: provided, in case the board of supervisors of any county shall so order, said town clerk shall calculate and carry out in separate items the several amounts of taxes as are to be levied unformly upon all the taxable property of the town in separate columns on such roll, the form of which may be prescribed by such county board.

This section was amended by Chap. 259, 1919, so as to limit its application to Milwaukee County. For method of computing taxes in all other municipalities in the state, see Section 1079a. Post.

Taxes calculated by town and village clerks. SECTION 1079a. Upon receipt of the certificate of apportionment from the county clerk, each town and village clerk, located in counties having a population of less than three hundred thousand, shall separately calculate and carry out opposite to each valuation in the tax roll the amount required to be raised upon such valuation, for state taxes, county taxes, school district taxes, town or village taxes and all other taxes, if any, including taxes to pay judgment. Said several amounts shall be entered in the tax roll in separate columns showing the purpose for which each amount is to be raised in such form as shall be prescribed by the tax commission. Under the head "taxes unpaid for previous year" he

shall enter opposite each tract of land so returned as aforesaid by the county clerk the year for which such tax remains unpaid.

This section, created by Chap. 259, 1919, requires town, city and village clerks in all counties outside of Milwaukee to compute and enter upon the tax roll separately the amount required to be raised: 1, for state taxes; 2, for county taxes; 3, for school district taxes; 4, for town, city or village taxes; and 5, for all other taxes including taxes to pay judgment. The tax commission is required to prescribe forms showing in separate columns opposite each description the amount of tax to be raised for each of the purposes above specified. As the law did not take effect until the first of January, 1920, taxes for 1919 were properly computed according to the former law.

Municipal treasurer's bond maximum, five hundred thousand dollars. SECTION 1080. The treasurer of each town, city or village shall execute and deliver to the county treasurer a bond, with sureties, to be approved, in case of a town treasurer, by the chairman of the town, and in case of a city or village treasurer by the county treasurer, in the sum of double the amount of state and county taxes apportioned to his town, city or village, not exceeding five hundred thousand dollars, conditioned for the faithful performance of the duties of his office and that he will account for and pay over according to law all state and county taxes which shall come into his hands. Provided, that when such bond is executed, or the condition thereof guaranteed, solely by a surety company as provided in section 1966—33, such bond shall be in a sum equal to the amount of such state and county taxes. The county treasurer shall give to said town, city or village treasurer a receipt for said bond, and file and safely keep said bond in his office.

A bond of a town treasurer complying in all respects with section 810, R. S., except that it is executed to the supervisors of the town and is made payable to them or to their successors in office, is a valid official bond, and an action thereon may be maintained by the town under sec. 984, R. S. *The Town of Platteville v. Hooper*, 63 Wis. 381.

Warrant. SECTION 1081. 1. Every such treasurer shall deliver said receipt to the clerk of his town, city or village on or before the first day of December, and thereupon the clerk shall attach to said tax roll a warrant, substantially in the following form:

THE STATE OF WISCONSIN to ...., treasurer of the town of ....., in the county of.....

You are hereby commanded to collect from each of the persons and corporations named in the annexed tax roll, and from the owners or occupants named of the real estate described therein, the taxes set down in such roll opposite to their respective names, and to the several parcels of land therein described; and in case any person or corporation upon whom any such sum or tax is imposed, shall refuse or neglect to pay the same, you are to levy and collect the same by distress and sale of the goods and chattels of the person or corporation so taxed, and out of the moneys so to be collected, after deducting

your fees, you are first to pay to the treasurer of said county, on or before the first Monday in March next, the sum of ...., for state taxes; you are to retain and pay out as town treasurer, according to law, the sum of ...., and the balance of said moneys you are required to pay to said treasurer for county purposes, on or before the twenty-second day of March, by which day you are further required to make return to said treasurer of this warrant, with said roll annexed.

Given under my hand this .... day of ...., 19... ...., Clerk.

2. The clerk shall deliver the tax roll, with said warrant annexed, to the treasurer, if he shall have duly qualified as such, on or before the third Monday in December, and charge him with the town and local taxes therein.

3. In all counties in this state having two hundred and fifty thousand or more population as ascertained by the last United States census, said warrant shall provide instead that said town, city or village treasurers shall pay such moneys to said county treasurer and make return to said treasurer of said warrant on or before the twenty-second day of March.

The warrant prescribed by this section, when properly executed and attached to the tax roll, defines the treasurer's authority and prescribes his duty in collecting taxes. It both confers the power and furnishes the protection essential to the performance of his duty. It will be observed that he is commanded "to collect from each of the owners of real and personal property named in the roll, the amount of taxes set opposite their respective names, and in case of their refusal or neglect to pay the same "to levy and collect such taxes by distress and sale of the goods and chattels of the persons so taxed." This language is so clear and positive as to leave no doubt of the treasurer's duty in the premises. His business is to collect the taxes as extended on the roll and the warrant protects him in so doing. *Stahl v. O'Malley*, 39 Wis. 328. *Powers v. Kindschi*, 58 Wis. 539.

Court Decisions. Collecting officers have nothing to do with the fairness or legality of taxes regularly extended upon the roll. "Their duties are purely ministerial and their sole authority is to execute the warrant as it is written. They have no jurisdiction to investigate mistakes in the roll or correct them. This is a lesson which ministerial officers cannot learn too often or too well." *Stahl v. O'Malley*, 39 Wis. 329. *Attorney General v. Erickson, Town Clerk*, 170 N. W. Rep. 958.

By express command of the warrant local treasurers are required to levy upon the personal property of owners who refuse or neglect to pay the taxes charged against them, and they cannot truthfully make the oath prescribed by Section 1114 for delinquent returns without having done so. *Allen v. Allen*, 114 Wis. 615. The law imposes positive duties on local treasurers and these duties are not satisfied by sitting in their offices and receiving the taxes handed to them. The warrant commands them to go out and collect, and failure to do so exposes them and their bondsmen to liability for neglect of official duty.

"All personal property taxes and taxes upon real estate, if possible, must be collected from the personal property of the owner or occupant." *Allen v. Allen*, 114 Wis. 615.

Delivery of roll before treasurer qualifies. SECTION 1082. If the tax roll shall have been delivered to the treasurer before qualification it shall be recalled from him and delivered to a treasurer appointed and qualified according to law; if it cannot be obtained the clerk shall make a new one in the same manner, directed to the treasurer so appointed and qualified, upon which he shall collect only the balance of taxes then remaining unpaid, and shall demand and sue for such as were collected upon the original roll from the person so collecting the same.

Delivery to sheriff. SECTION 1083. If the treasurer-elect shall fail to qualify as such or to file his bond with the county treasurer, in the manner and within the time prescribed, and the board shall fail to appoint a treasurer, or the person so appointed shall so fail to qualify and give such bond and deliver a receipt therefor by the third Monday in December, the clerk shall deliver the tax roll and warrant to the sheriff of the county, or if the same cannot be obtained in the case mentioned in the last preceding section, a new roll and warrant, made as aforesaid, and the sheriff shall execute to the county treasurer a like bond as required of the treasurer, and by himself or deputy shall make like collections and returns, and shall, unless he receives a fixed salary for all services, be entitled to collect for his services in cities one per cent, and in towns and villages two per cent upon all taxes paid on or before January thirty-first, and on all taxes collected by him after said date, in cities four per cent, and in towns and villages five per cent, said fees to be computed and added to the amounts as specified on the tax roll, and he shall be responsible to the same extent as treasurers appointed by boards, for all taxes so handed over to him for collection; and for the purpose of collecting the same he shall be vested with all the powers conferred upon the treasurer.

Proceedings if roll not made. SECTION 1084. Whenever any town, city or village clerk shall neglect or refuse to make and deliver the tax roll and warrant within the time required by law the county clerk shall, at any time after such neglect or refusal, demand and summarily obtain the assessment roll for such year, and make, in the same manner as required of the town clerk, a tax roll for such town, city or village and the like warrant thereto, and deliver the same to the sheriff of the county for collection, who shall give a like bond and have the power and proceed as directed in the next preceding section, in the case there provided, to execute such warrant. If the assessment roll cannot be obtained the county clerk may use a copy thereof if obtainable. If he can obtain neither original nor copy he shall make out, to the best of his ability, a tax roll from the last assessment or tax roll on file in his office or in the office of the county treasurer, which shall then be taken and deemed conclusively the legal tax roll of such town for all purposes whatever. For all such services the county clerk shall be allowed by the county board and paid from the

county treasury a reasonable compensation, which shall be charged to the town in the next apportionment of taxes.

Amended by chap. 679, 1919, by striking out provision authorizing county clerk to extend time for collection of tax.

Clerical help on reassessment. SECTION 1084a. Whenever a reassessment or reassessments of taxes shall hereafter be ordered in any town, the town board of such town may employ such additional clerical help for the purpose of preparing the tax rolls upon such reassessment as in its judgment shall be necessary.

Created by Chap. 274, 1917. "Prior to the enactment of this section, a town board had no authority to employ another person to perform that duty even though by reason of reassessments for previous years the work of making out the roll became so complicated and difficult that neither the clerk nor any other qualified elector of the town was capable of doing it." *Mulvancy v. Town of Armstrong*, 168 Wis. 476.

Correction of roll. SECTION 1085. Whenever it shall be discovered by any town, village or city clerk or treasurer that any parcel of land has been erroneously described on the tax roll he shall correct such description, and when he shall discover that personal property has been assessed to the wrong person, or two or more parcels of land belonging to different individuals or corporations have been erroneously assessed together on his tax roll, he shall notify the assessor and all parties interested, if residents of the county, by notice in writing to appear at the clerk's office at some time, not less than five days thereafter, to correct the assessment roll, at which time and place the assessment roll shall be corrected by entering the names of the persons liable to assessment thereon, both as to real and personal property, describing each parcel of land and giving its proper valuation to each parcel separately owned; but the valuation so given to separate tracts of real estate shall not together exceed nor be less than the valuation given to the same property when the several parcels were assessed together. Such valuation of parcels of land or correction of names of persons assessed with personal property may be made at any time before the tax roll and warrant shall be returned to the county treasurer for the year in which such tax is levied. Such valuation or correction of names, when so made, shall be held just and correct and be final and conclusive.

The authority conferred on the clerk and treasurer by this and the next following section is strictly limited to the correction of the errors enumerated and does not extend to any other defects in the tax roll. See notes to sections 1079 and 1081, pp. 108–110, Supra.

Correction of tax roll after delivery. SECTION 1085a. Whenever after delivery of the tax roll to the treasurer it shall be discovered that any city, town or village clerk in making out the tax roll has made a mistake therein in entering the description of any real or personal property, or the name of the owner or person to whom assessed,

or in computing or carrying out the amount of the tax, the clerk with the consent of the treasurer at any time before the treasurer is required to make his return of delinquent taxes, may correct the name of the taxpayer, the description of property or errors in computing or carrying out the tax to correspond to the entry which should have been made on the tax roll before delivery to the treasurer. If any such correction shall produce a change in the total amount of taxes entered in the tax roll, the clerk shall make corresponding corrections in the warrant annexed to such roll. The clerk shall enter a marginal note opposite each correction, stating when made, which shall be signed by the clerk and treasurer.

An intentional omission of a tax apportionment from the tax roll is not a mistake within this section. *State v. Krumenauer*, 135 Wis. 185.

Notice of correction. SECTION 1086. When the assessment roll shall have been so corrected the clerk shall enter a marginal note on the roll stating when the correction was made by the assessor; and if the taxes shall have been extended against the property previously the clerk shall correct the tax roll in the same manner that the assessment roll was corrected, and extend against each tract the proper amount of tax to be collected.

REASSESSMENT OF TAXES.

When and how. SECTION 1087. Whenever any tax or assessment or any part thereof levied on real estate, whether heretofore or hereafter levied, shall have been set aside or determined to be illegal or void or the collection thereof prevented by the judgment of a court or the action of the county board; or whenever any town, city or village treasurer shall have been prevented by injunction from collecting or returning as delinquent any such tax or assessment in consequence of any irregularity or error in any of the proceedings in the assessment of such real estate, the levy of such tax or the proceedings for its collection, or of any erroneous or imperfect description of such real estate, or of any omission to comply with any form or step required by law, or of the affixing of a revenue stamp to the tax certificate, and including the amount thereof in the same, or the including of any illegal addition with the lawful tax, or for any other cause, then, if the real estate was properly taxable or assessable, if it be not a proper case to collect by a resale of the land, such tax, or so much thereof as shall not have been collected and as may be taxable or assessable thereto, may be reassessed or relevied upon such real estate at any time within three years after such judgment or such action of the county board or the dissolution of such injunction; and the proper town board, village board, board of trustees or common council shall make an order directing the same to be reassessed upon such real estate, and the clerk shall insert the same in the tax roll, opposite

such real estate, in a separate column, as an additional tax, and the same shall be collected as a part of the tax for the year when so placed on the roll. Any such school district tax shall be so reassessed and relevied on the order of the town board; but the provisions of this section shall not be construed as conflicting with, limiting or in any way affecting the reassessment provided for in sections 1201*b* and 1210*c* of these statutes.

Prior to the enactment of the reassessment law, (sections 1087—45 to 1087—57), resort was generally had to this section for the correction of illegal assessments, but since that time, it has practically fallen into disuse. In practice it never afforded a satisfactory remedy for correcting the assessment of the entire district, but was limited to the property involved in the litigation.

Numerous decisions were rendered under the former law, but few of them have a direct bearing on reassessments as now conducted. Many of the references cited in the former edition of the tax laws are, therefore, omitted from this pamphlet. Special assessments are made expressly subject to reassessment by sections 1210d and 1210e. See also sections 1210b, 1210h and notes.

When reassessment valid. The provision of taxing laws for a relevy when there has been an omission to tax property refers to such casual omissions as are likely to happen and which do not avoid the whole assessment. Where the omission originates in an intentional departure from the law on the part of the authorities the tax is illegal and cannot be reassessed. *Weeks v. Milwaukee*, 10 Wis. 242. A tax levied in violation of the constitutional rule of uniformity cannot be legalized by a subsequent act or reassessment. *Dean v. Borchsenius*, 30 Wis. 236. But see *Whittaker v Janesville*, 33 Wis. 76, holding that taxes which were void because the city charter violated the rule of uniformity might be reassessed. After a void assessment has been made because unequal and unjust the correct proportion can only be ascertained by a reassessment. *Marsh v. Supervisors*, 42 Wis. 502.

Affecting the groundwork of the tax, etc. The fact that the lands were not assessed on actual view in such a cause. *Clark v. Lincoln Co.*, 54 Wis. 580. Errors and irregularities which affect all the taxable property in the district affect the groundwork of the tax. *Kingsley v. Supervisors*, 49 Wis. 649. So where the assessor put an undervaluation of one-half to two-thirds upon the property. *Single v. Stettin*, 49 Wis. 645; *Flanders v. Merrimack*, 48 id. 567.

No reassessment is necessary when the illegality found does not affect the ground work of the tax, nor all the property in the municipality or assessment district, nor any property not involved in the suit. *Brown v. Oneida County*, 103 Wis. 150.

Reassessment of electric light taxes. SECTION 1087a. Any of said property shall be subject to reassessment for reasons stated, and in the manner provided in secton 1087. Amended by Chap. 679, 1919.

Assessor of incomes—Duties of assessor of incomes. SECTION 1087*b*. (1) **Supervise assessments.** The assessor of incomes shall have full and complete supervision and direction of the work of the town, city and village assessors of the county or counties within his assessment district and shall annually, on or before the last Tuesday of April, call a meeting for each such county of all such local assessors

for conference and instruction relative to their duties in the valuation and assessment of all property subject to taxation. Each such local assessor, upon notice by mail from said assessor of incomes shall attend such meeting, and shall receive therefor the sum of three dollars, and also six cents per mile for travel from his residence to the county seat and returning. Such compensation shall be paid out of the treasury of the county in which such local assessor resides upon the certificate of the assessor of incomes showing such attendance and travel, in like manner as certificates of witnesses and jurors are paid.

Examine public records. (2) The assessor of incomes shall have access to all public records, books, papers and offices throughout his district and shall make a full and complete examination of them and investigate all other matters and subjects relative to the assessment and taxation of property in the several towns, villages and cities contained therein; and for that purpose he shall visit each such town, village and city as often as may be necessary during each year.

Test work of assessors. (3) The assessor of incomes shall examine and test the work of assessors during the progress of their assessments and ascertain whether any of them is assessing property at other than full value or is omitting property subject to taxation from the roll. He shall have the rights and powers of a local assessor for the examination of persons and property and for the discovery of property subject to taxation, and shall have the power to personally value and reassess any property previously assessed by the local assessor. If he shall ascertain that any property has been omitted or not assessed according to law, he shall bring the same to the attention of the local assessor of the proper district and if such local assessor shall neglect or refuse to correct the assessment he shall report the fact in writing to the clerk of the proper board of review at or before the meeting of such board and such clerk shall lay the same before said board of review for its action.

Report violation of law. (4) Whenever the assessor of incomes ascertains, or has good reason to believe, that any assessor is guilty of a violation of law, he is authorized to make complaint to the presiding judge of the circuit court for the removal of such assessor. The district attorney shall attend and prosecute such proceedings for removal.

Statistical reports to county board. (5) The assessor of incomes shall make a report to the county board of each county within his assessment district showing in detail the work of local assessors in their several districts, the failure, if any, of such assessors or property owners to comply with the law, the relative assessed and true value of property in each local assessment district, and all such information and statistics as he may obtain which will be of assistance to the county board in determining the relative value of all taxable property

in each town, city and village in the county. Such report shall be filed with the county clerk at least fifteen days before the annual meeting of the county board. The county clerk shall cause to be printed not less than two hundred copies of such report, one of which shall be mailed immediately by the county clerk to each member of the county board. Not less than six copies of such printed report, together with all statistics accompanying the same, shall be filed with the state tax commission.

May reassess for county equalization. (6) The county board, upon its own motion, may direct the assessor of incomes to make a reassessment of all the taxable property in any local assessment district for any year, and to report the same in the form of an assessment roll to the county board at its next annual session. In making such reassessment, the value of the property shall be fixed, as nearly as may be, as of the time the original assessment was made, and he shall have the powers and be governed by the rules provided by law for local assessors in the assessment of property for taxation. In case the aggregate valuation of taxable property as determined by such reassessment, shall be ten per cent or more in excess of the aggregate valuation thereof as fixed by the original assessment, the expense of making such reassessment, not exceeding five dollars per day for each day necessarily and actually spent in making the same, shall be charged to such local assessment district in the next apportionment thereto of county taxes.

To attend annual meeting. (7) The state tax commission shall call a meeting of the assessors of incomes at the capitol at a specified time in the month of January in each year, for a conference on the subjects of taxation and the administration of the laws, and for the instruction of such officers in their duties. The actual and necessary expenses of each such officer in such attendance shall be audited and paid out of the state treasury in the same manner as other expenses of said assessors are audited and paid.

This section first appeared as Chap. 445, 1901, creating the office of county supervisor of assessments. When the income tax law was enacted by chap. 658, 1911, the powers and duties of supervisors of assessments were transferred to assessors of incomes and the subsequent changes in the law are only such as were necessary to effectuate this purpose.

Under this section, assessors of incomes are authorized and required:

1. To exercise general supervision over the assessment of property in their respective districts.
2. To examine and test the work of assessors during the progress of the assessment and ascertain whether they are assessing property at other than full value, or omitting property subject to taxation from the roll.
3. In case assessors are assessing property at other than true value or otherwise violating any assessment law to report the fact in writing to the proper boards of review.
4. To apply to the circuit court for removal of any assessor guilty

of discrimination in the assessment of different persons or classes of property or otherwise violating assessment laws.

5. To make a report to the county board showing in detail the work of local assessors in their respective districts, together with such statistical information as they can obtain as an aid to the county board in making the county equalization.

6. To revalue or reassess the property of any assessment district on the order of the county board.

The valuation or reassessment of property by assessors of incomes under subdivision three, and the socalled reassessment which they are authorized to make on the order of the county board under subdivision six are not reassessments at all within the meaning of Sections 1087—45 to 1087—57. They are mere test appraisals of property for the purpose of comparison with the assessments made by local assessors for the use of boards of review under subdivision three, and for the use of the county board under subdivision six in making the county equaliation. In neither case can the assessor of incomes' valuations, be substituted for those of the assessor on the local roll or in computing taxes. Under present law, assessors of incomes have no authority either to make or institute reassessments unless ordered to do so by the tax commission under the regular reassessment statute.

CHAPTER VIII

TAX COMMISSION, POWERS AND DUTIES; REASSESSMENTS

(Chapter 48c, sec. 1087—31 to 1087—57, inclusive.)

Tax commission created. SECTION 1087—31. There is hereby created a state board to be designated and known as the "Tax Commission."

The history of the tax commission dates back to the agitation of the early 90's which resulted in the appointment of a temporary commission to investigate the subject of taxation and report to the next legislature. One of the principal recommendations of the report made was for the appointment of a permanent tax commission. Pursuant to this recommendation, the legislature of 1899 provided for the appointment of a tax commissioner and two assistant commissioners. In 1905 the commission was reorganized in its present form consisting of three members of equal authority and responsibility. Following are the names of the several members of the commission and the secretaries thereof since it was created and the term of service of each.

TEMPORARY COMMISSION.

Burr W. Jones K. K. Kennan George Curtis, Jr.	}	May 29, 1897, to Dec. 31, 1898

PERMANENT COMMISSION.

Michael Griffin	from	April 28, 1899	to	Dec. 29, 1899
Norman S. Gilson	"	June 1, 1899	"	Feb. 24, 1911
George Curtis, Jr	"	June 1, 1899	"	Feb. 24, 1911
William J. Anderson	"	Jan. 2, 1900	"	Jan. 30, 1901
Nils P. Haugen	"	Jan. 30, 1901	"	Date
Thomas E. Lyons	"	Feb. 24, 1911	"	Date
Thomas S. Adams	"	Feb. 24, 1911	"	Sept. 20, 1915
Carroll Atwood	"	Nov. 10, 1915	"	Date

SECRETARIES.

Samuel M. Smith	"	Mar. 15, 1900	"	April 15, 1901
Geo. H. Francis	"	Dec. 18, 1901	"	Jan. 15, 1912
A. J. Myrland	"	Jan. 15, 1912	"	Date

Personnel; term. SECTION 1087—32. Said tax commission shall be composed of three commissioners, who shall be appointed by the governor by and with the advice and consent of the senate. The three

persons first to compose said board shall be appointed within ten days after the passage and publication of this act and before the adjournment of the present legislature if practicable. Of such three persons one shall be appointed and designated to serve for a term ending on the first Monday in May, 1909, one for a term ending on the first Monday in May, 1911, and one for a term ending on the first Monday in May, 1913, each of said terms to begin upon the qualification of the person appointed therefor. Upon the expiration of the terms of the three commissioners first to be appointed as aforesaid, each succeeding commissioner shall be appointed and shall hold his office for the term of eight years, except in the case of a vacancy as hereinafter provided, and each commissioner shall hold his office until his successor shall have been appointed and qualified.

Appointments; vacancies. Section 1087—33. After the appointment of said first three commissioners and except when appointed to fill a vacancy, each commissioner shall be appointed on or before the last Monday in February during the biennial session of the legislature next preceding the commencement of the term for which he shall be appointed. Vacancies in appointive state offices shall be filled by appointment by the appointing power and in the manner prescribed by law for making regular full term appointments thereto, and appointees to fill vacancies therein shall hold office for the residue of the unexpired term or, if no definite term of office is fixed by law, until their successors are appointed and qualify.

Revised by Chap. 362, 1919, as to the manner of filling vacancies.

Qualifications. Section 1087—34. The persons to be appointed as members of such commission shall be such as are known to possess knowledge of the subject of taxation and skill in matters pertaining thereto. So far as practicable they shall be so selected that the board will not be composed wholly of persons who are members of or affiliated with the same political party or organization. No person appointed as such commissioner shall hold any other office under the laws of this state nor any office under the government of the United States or of any other state. Each such commissioner shall devote his entire time to the duties of the office and shall not hold any position of trust or profit, engage in any occupation or business interfering with or inconsistent with his duties, or serve on or under any committee of any political party.

Oath. Section 1087—35. Each commissioner, within thirty days after notice of his appointment shall take and file the official oath. Revised by Chap. 93, 1919.

Organization; quorum; sessions. Section 1087—36. The commissioners first appointed under section 1087—32, after having duly qualified, shall without delay meet at the capitol in Madison, and shall thereupon organize and elect one of their number as chairman. A ma-

jority of said commissioners shall constitute a quorum for the transaction of the business and the performance of the duties of the commission. The said commission shall be in continuous session and open for the transaction of business every day except Sundays and legal holidays; and the sessions of such commission shall stand and be deemed to be adjourned from day to day without formal entry thereof upon its records. The commission may hold sessions or conduct investigations at any place other than the capitol when deemed necessary to facilitate the performance of its duties.

Clerks; experts; rules. SECTION 1087—37. Said commission may appoint a secretary and may employ such other persons as experts and assistants as may be necessary to perform the duties that may be required of the commission. The secretary shall keep full and correct minutes of all hearings, transactions, and proceedings of said commission and shall perform such other duties as may be required by the commission. The commission shall have power to make all needful rules, not inconsistent with law, for the orderly and methodical performance of its duties as a board of assessment or otherwise, and for conducting hearings and other proceedings before it.

Office expenses. SECTION 1087—38. The commission shall keep its office at the capitol and shall be provided by the superintendent of public property with suitable rooms, necessary office furniture, supplies, stationery, books, periodicals and maps.

Powers and duties defined. SECTION 1087—39. It shall be the duty of the commission, and it shall have power and authority:

(1) To have and exercise general supervision over the administration of the assessment and tax laws of the state, over assessors, boards of review and assessors of incomes, and over county boards in the performance of their duties as county boards of assessment, to the end that all assessments of property be made relatively just and equal at true value in substantial compliance with law.

(2) To confer with, advise and direct assessors, boards of review, county boards of assessment and assessors of incomes as to their duties under the statutes of the state.

(3) To direct proceedings, actions and prosecutions to be instituted to enforce the laws relating to the penalties, liabilities and punishment of public officers, persons, and officers or agents of corporations for failure or neglect to comply with the provisions of the statutes governing the return, assessment and taxation of property; and to cause complaints to be made against assessors, members of boards of review, assessors of incomes, and members of county boards, or other assessing or taxing officers, to the proper circuit judge for their removal from office for official misconduct or neglect of duty.

(4) To require district attorneys to assist in the commencement and prosecution of actions and proceedings for penalties, forfeitures,

removals and punishment for violations of the laws of the state in respect to the assessment and taxation of property, in their respective counties.

(5) To collect annually from all town, city, village, county and other public officers information as to the assessment of property, collection of taxes, receipts from licenses and other sources, the expenditure of public funds for all purposes, and such other information as may be needful in the work of the commission, in such form and upon such blanks as the commission shall prescribe; and it shall be the duty of all public officers so called upon to fill out properly and return promptly to the commission all blanks so transmitted. To examine all town, village, city and county records for such purposes as are deemed needful by the commission. To publish annually the information collected, with such compilations, analyses or recommendations as may be deemed needful.

(5a) In its discretion to inspect and examine or cause an inspection and examination of the records of any town, city, village or county officer whenever such officer shall have failed or neglected to return properly the information as required by subdivision (5) of this section, within the time set by the tax commission. Upon the completion of such inspection and examination the tax commission shall transmit to the clerk of the town, city, village or county a statement of the expenses incurred by the tax commission to secure the necessary information. Duplicates of such statements shall be filed in the office of the secretary of state and state treasurer. Within sixty days after the receipt of the above statement, the same shall be audited, as other claims of towns, cities, villages and counties are audited, and shall be paid into the state treasury, in default of which the same shall become a special charge against such town, city, village or county and be included in the next apportionment or certification of state taxes and charges, and collected with interest at the rate of ten per cent per annum from the date such statements were certified by the commission, as other special charges are certified and collected.

The officers responsible for the furnishing of the information collected pursuant to this section, shall be jointly and severally liable for any loss the town, city, village or county may suffer through their delinquency; and no payment shall be made them for salary, or on any other accounts, until the cost of such inspection and examination as provided above shall have been paid into the town, city, village or county treasury.

(6) To require individuals, partnerships, companies, associations and corporations to furnish information concerning their capital, funded or other debt, current assets and liabilities, value of property, earnings, operating and other expenses, taxes and all other facts which may be needful to enable the commission to ascertain the value and the relative burdens borne by all kinds of property in the state.

(7) To summon witnesses to appear and give testimony, and to produce records, books, papers and documents relating to any matter which the commission shall have authority to investigate or determine.

(8) To cause the deposition of witnesses residing within or without the state or absent therefrom, to be taken, upon notice to the interested party, if any, in like manner that depositions of witnesses are taken in civil actions pending in the circuit court, in any matter which the commission shall have authority to investigate or determine.

(9) To visit the counties in the state, unless prevented by other necessary official duties, for the investigation of the work and the methods adopted by local assessors, boards of review, assessors of incomes and county boards, in the assessment, equalization and taxation of real and personal property.

(10) To carefully examine into all cases where evasion or violation of the laws for assessment and taxation of property is alleged, complained of or discovered, and to ascertain wherein existing laws are defective or are improperly or negligently administered.

(11) To investigate the tax systems of other states and countries and to formulate and recommend such legislation as may be deemed expedient to prevent evasion of assessment and tax laws and to secure just and equal taxation and improvement in the system of taxation in the state.

(12) To inquire into the system of accounting of public funds in use in towns, villages, cities and counties; to devise, prescribe and at the request of any town, village, city or county, to install a system of accounts which shall be as nearly uniform as practicable; provided, that when so installed the system shall be retained by the town, village, city or county; and to audit the books of the town, village, city or county officers upon the request of the town or village board, city council or county board, or upon its own motion. It shall be the duty of the commission to establish a scale of charges for the installation of systems of accounts and for audits, when such installation or audit is requested by a town, village, city or county. Upon the completion of such work the commission shall transmit to the clerk of the town, village, city or county, a statement of such charges. Duplicates of such statements shall be filed in the offices of the secretary of state and state treasurer. Within sixty days after the receipt of the above statement of charges, the same shall be audited as other claims against towns, villages, cities and counties are audited and shall be paid into the state treasury, in default of which the same shall become a special charge against such town, village, city or county, and be included in the next apportionment or certification of state taxes and charges, and collected, with interest at the rate of ten per cent per annum from the date such charges were certified by the commission, as other special charges are certified and collected.

(13) To consult and confer with the governor of the state upon the subject of taxation, the administration of the laws in relation thereto and the progress of the work of the commission, and to furnish the governor from time to time such assistance and information as he may require.

(14) To transmit to the governor and to each member of the legislature, thirty days before the meeting of the legislature, the report of

the commission showing all the taxable property in the state and the value of the same in tabulated form with recommendations for improvement in the system of taxation in the state, together with such measures as may be formulated for the consideration of the legislature.

(15) To exercise and perform such further powers and duties as may be granted to or imposed upon the commission by law.

"The administrative duties of the first commission were limited to making the state assessment, assessing the properties of express, sleeping car, freight line and equipment companies and directing supervisors of assessment. The assessment of the property of steam railroad companies was added in 1903. In addition to the foregoing, the commission is now required to assess the property of street railway companies, including electric light and power plants operated in connection therewith; supervise the assessment of the property of utilities furnishing water, light, heat and power; order and direct reassessments of towns, cities and villages on proper showing; entertain and determine appeals from equalizations made by county boards; collect statistics and prescribe forms for local taxing officers; audit the accounts of towns, cities and villages and install a system of public accounting on request of the proper authorities; supervise the administration of the income tax, and assess the income of corporations and joint stock companies."—Tax Commission Report for 1914.

For a statement of the development and activities of the tax commission since it was created in 1901, see its biennial reports to the Governor and Legislature since 1903.

Hearings; witnesses; contempt; fees for subpoenas. SECTION 1087—40. Oaths to witnesses in any matter under the investigation or consideration of the commission may be administered by the secretary of the commission or by any member thereof. In case any witness shall fail to obey any summons to appear before said commission or shall refuse to testify or answer any material question or to produce records, books, papers or documents when required so to do, such failure or refusal shall be reported to the attorney-general, who shall thereupon institute proceedings in the proper circuit court to compel obedience to any summons or order of the commission or to punish witnesses for any such neglect or refusal. Any person who shall testify falsely in any material matter under the consideration of the commission shall be guilty of and punished for perjury. In the discretion of the commission, officers who serve summons or subpoenas, and witnesses attending, shall receive like compensation as officers and witnesses in the circuit court. Such compensation shall be charged to the proper appropriation for the tax commission.

Special investigations. SECTION 1087—40a. The commission may, in its discretion, appoint one of its members, or its secretary or engineer, to act for it to investigate and make report upon any matter pending before it, and such member, secretary or engineer, may hold hearings, administer oaths to witnesses, take testimony and perform all duties necessary to carry his commission into effect. He shall report any evidence submitted to him to the commission in such manner as it may prescribe.

The authority granted to the commission by this section is limited to purely administrative duties as distinguished from those of a judicial nature. *State ex rel. Ruemmele vs. Haugen*, 160 Wis. 494.

For three years. SECTION 1087—44. Any property subject to assessment by the tax commission omitted from assessment in any of the three next previous years by mistake or inadvertence unless previously reassessed for the same year or years, shall be entered by the commission upon its assessment and tax roll once additionally for each year so omitted, designating each such additional entry as omitted for the year 19.. (giving year of omission) and fixing the valuation and tax to each entry for a former year as the same should then have been assessed according to the best judgment of the commission. The proceedings relating to such assessment shall be had and hearings given as far as practicable in accordance with the provisions of chapter 51 of the statutes.

Reassessments; hearing; order. SECTION 1087—45. Whenever it shall satisfactorily appear to the tax commission upon complaint made by the owner or owners of taxable property in any assessment district, other than an assessment district within the corporate limits of any city containing more than fifteen such assessment districts, the aggregate assessed valuation of which is not less than five per cent of the assessed valuation of all of the property in such district, according to assessment next hereinafter mentioned and a summary hearing in that behalf had, that the assessment of property in such assessment district is not in substantial compliance with law and that the interest of the public will be promoted by a reassessment thereof, said commission shall have authority in its discretion to order a reassessment of all or of any part of the taxable property in such district to be made by one or more persons to be appointed for that purpose by said commission. Notice of such hearing specifying the time and place thereof shall be mailed to the chairman and clerk of the town, president and clerk of the village or mayor and clerk of the city, which constitutes or includes such assessment district, not less than eight days before the time fixed for such hearing. The order directing such reassessment and naming the person or persons appointed to make the same shall be filed in the office of the clerk of such district, and a duplicate thereof shall be retained in the office of the commission. A copy of such order shall be transmitted to the assessor of incomes of the county in which such district is located and to each of the persons appointed to make such reassessment and to serve on the board for the review thereof, which shall be legal notice to such persons respectively, of their appointment.

Amended by Chap. 384, 1919, by excluding the city of Milwaukee and reducing the percentage of taxable property the owners of which may apply for reassessment, and expressly authorizing reassessment of part of the taxable property of a district.

Court decisions. Chapter 259, 1905, authorizing the tax commission to order a reassessment when the original assessment was not made in substantial compliance with law and public interest would be promoted by reassessment, was upheld as valid and constitutional in *State v. Daniels*, 142, Wis. 649.

The reassessment law aims to correct substantial violation of the assessment laws by whomsoever committed. It authorizes a reasessment where an unjust and unequal assessment was made by the local assessor even though no complaint was made to the board of review and that board was not called upon to revise such assessment and consequently did not violate its duty in the matter. *Cullliton v. Bentley* 165 Wis. 262.

Oath; powers. Section 1087—46. The person or persons so appointed to make such reassessment, without delay, shall severally take and subscribe an oath or affirmation to support the constitution of the United States and of the state of Wisconsin and faithfully to perform the duties imposed upon him in respect to such reassessment to the best of his ability, and shall file the same with the tax commission. Thereupon such person or persons shall proceed with diligence to make a reassessment of all the taxable property in such district. For that purpose he or they shall have all the power and authority given by law to assessors in such district and shall perform all the duties and be subject to all restrictions and penalties imposed by law upon such assessors. He or they shall have access to all public records and files which may be needful or serviceable in the performance of said duties, and while engaged therein shall be entitled to have custody and possession of the roll containing the original assessment in such district and all property and other statements and memoranda relating thereto. A blank assessment roll and all property statements and other blank forms needful for the purposes of such reassessment shall be furnished by the county clerk at the expense of the county upon the application of the assessor of incomes.

The authority of the tax commission under secs. 1087—45, 1087—51, 1087—57, Stats., to order a reassessment may be exercised in the case of a current assessment, even though the tax roll has been delivered to the treasurer for collection. *State ex rel. South Range v. Tax Com.* 168 Wis. 253.

Board of review; notice of meeting. Section 1087—47. In the order for such reassessment the tax commission shall designate three persons to serve as a board for the correction and review of such reassessment. As soon as practicable the person or persons making such reassessment shall inform the clerk of such district of a date on which such reassessment will be ready for the consideration of such board, which information shall be given in time to enable such clerk to give the notice hereinafter required. The clerk shall thereupon give notice that such board will meet on such date at the place provided by law for the meeting of the regular board of review of such district, specifying such place. He shall record such notice in the record book of proceedings of the board of review of such dis-

trict after first recording therein the order for such reassessment; he shall post such notice in three conspicuous public places in said district and shall also serve a copy of such notice upon each of the persons named to act as such board and upon the assessor of incomes if such reassessment be not made by him, which posting and service shall be at least one week before the day designated for such meeting; provided, that in case of the failure or refusal of such clerk to give and serve the notice aforesaid in the manner herein prescribed within five days after he shall have been requested to do so by the person or persons making such reassessment the assessor of incomes in and for such district may give and serve such notice with like force and effect as if given and served by the clerk. Such service may be by personal delivery to the person to be served or by leaving such copy at his usual place of abode or by mailing the same in a sealed envelope postpaid and directed to such person at his post-office address. A memorandum stating the time and place of such posting and the time and manner of such service shall be entered by the clerk in the record aforesaid. Such memorandum, authenticated by the signature of the clerk shall be presumptive evidence of the facts therein stated; and the fact, time, and manner of such posting and service may be proved by any person having knowledge of the facts even though no entry of such memorandum be made.

Amended by Chap. 384, 1919, so as to authorize assessors of incomes to give notice of the meeting of the board of review in case of the failure or refusal of the local clerk to do so.

Hearing. SECTION 1087—48. The persons designated to serve as a board to review such reassessment shall attend at the time and place specified in such notice. A majority of such persons shall constitute a quorum. Before proceeding in such review they shall be sworn by the clerk or by some other person authorized by law to administer oaths, to faithfully and impartially perform their duties in respect to such reassessment. The clerk of such district shall attend and serve as the clerk of such board at all its sessions and shall perform all the duties required of such clerks at meeting of the regular board of review of such district, except that he shall have no voice in the determinations of such board.

Evidence. SECTION 1087—49. The person or persons making such reassessment shall attend such meeting, shall lay before such board the roll containing the reassessment of property made by him or them and all property statements, affidavits, and other memoranda in relation thereto, shall furnish the board all information in his or their possession which may be useful in the work of such board, and may give testimony of any facts within his or their knowledge pertinent to any matter under the consideration of such board.

Review of reassessment; rights of property owner. SECTION 1087—50. 1. Such board shall carefully examine and consider such

reassessment roll and all statements and other information accompanying the same or given in relation thereto. They shall review and correct such reassessment in like manner as the regular board of review of such district is required to review assessments therein and for that purpose they may adjourn from time to time and shall otherwise have and exercise all the power and authority given by law to boards of review and shall be subject to all the rules and restrictions imposed upon such boards. Any owner of taxable property in such district shall have the right to examine such reassessment and shall have all the rights and privileges before such board in respect to such reassessment that are given by law in respect to any assessment of property in such district.

Amended by Chap. 384, 1919.

Sec. 1087—45 et seq. Stats. aims to correct substantial violation of the assessment laws by whomsoever committed. It authorizes a reassessment where an unjust and unequal assessment was made by the local assessor, even though, no complaint having been made to the board of review, that board was not called upon to review such assessment and consequently did not in any way violate its duty in the matter. The legislature had power to grant such authority to the tax commission. *Culliton v. Bentley*, 165 Wis. 262.

Affidavit; filing. SECTION 1087—51. Upon the completion of the work of such board and the incorporation in such reassessment roll of any corrections and changes ordered by such board, the person or persons making such reassessment shall make and annex to such roll an affidavit conforming as nearly as may be to the affidavit required by law to be annexed to assessment rolls in such district. Such reassessment roll when completed shall be filed in the office of the clerk of such district and shall take the place of the original assessment made in such district for said year for all purposes and shall be prima facie evidence of the facts therein stated and of the regularity of all the proceedings culminating therein.

See note to section 1081, p. 110, Supra.

Power of assessor. SECTION 1087—52. If such reassessment shall be made by any person other than the assessor of incomes of the county in which such district shall be located the assessor of incomes shall have all the authority in respect thereto that is possessed by him in respect to other assessments in his county and, in such case, he shall render what assistance he can practicably to the person or persons making such reassessment and to the board which shall review the same, the meeting of which board shall be attended by him. The district attorney of the county in which such reassessment shall be made shall render any legal assistance which may be required in relation thereto or the review thereof upon the request of the assessor of incomes.

Persons appointed by the tax commission to make the assessment are not officers of the state. The act does not in any way deprive the

local officers of their constitutional rights in the making of the assessment. *State ex rel. Hessey v. Daniels*, 143 Wis. 649.

Compensation; witness fees. SECTION 1087—53. The person or persons makng such reassessment and the person serving upon the board for review thereof shall receive such compensation for their services and expenses as may be designated by the tax commission in the order directing such reassessment. Any witness directed to be summoned by such board shall be entitled to fees for travel and attendance at the rates allowed by law to witnesses in the circuit court, but shall not be entitled to such fees prior to his attendance and the giving of his testimony. Assessors of incomes may be appointed to make reassessments, but in no case shall an assessor of incomes be appointed to reassess a district when the complaint was made or the proceedings instituted by him.

Amended by Chap. 384, 1919, by removing the limitation on the compensation to be paid to persons appointed to make reassessments and serve on the board of review and specifically authorizing the appointment of assessors of incomes for that purpose unless the complaint was made or proceedings instituted by them.

Statement of expenses. SECTION 1087—54. Upon completion of the review of such reassessment, each person entitled to compensation for services in respect thereto as provided in section 1087—53 shall make out a statement of his claim therefor against the state of Wisconsin and execute a voucher for the payment thereof upon blank forms to be furnished by the tax commission. Such statement shall show the number of days for which compensation is claimed, the rate per day, the character of the service, the total amount claimed, the address of the claimant, and, in case of witnesses, the number of miles traveled, which statement shall be verified by the affidavit of the claimant or of some person having knowledge of the facts. Each such claim shall be approved, if correct, by a member of such board and by the assessor of incomes. A memorandum of all such claims, showing the number of days and character of service and amount due to each person, shall be entered at the foot of the record of the proceedings of such board.

See note to next section.

Review of claims; payment. SECTION 1087—55. The statements and vouchers mentioned in section 1087—54 shall be promptly transmitted by the assessor of incomes to the tax commission, who shall have authority to review the same and determine the number of days to be allowed. After such review and determination and after procuring any needed corrections therein said commission shall indorse their approval of such statements and file the same and such vouchers in the office of the secretary of state. Such claims shall thereupon be audited by the secretary of state and paid out of the state treasury in like manner that other claims against the state are audited and

paid. The amount so paid shall constitute an indebtedness of the district in which such reassessment was made to the state of Wisconsin, and such indebtedness with interest thereon at six per cent per annum shall be a special charge upon such district to be certified to and collected from such district in the then next levy and certification of state taxes and special charges, in like manner that other indebtedness of cities, towns and villages to the state are certified and collected.

The expense of a reassessment ordered by the tax commission under Section 1087—45 is not a state expense incurred for state purposes but a local expense for local purposes incurred through state agency in order to correct a violation by local officers of the law relating to assessments; hence the provision that the state be reimbursed by the district is valid and does not violate the constitutional requirement that the rule of taxation shall be uniform. *Attorney General vs. Hammerlund*, 159 Wis. 315.

Penalty for neglect of duty; when reassessment may be ordered. SECTION 1087—56. If any person appointed or required to perform any duty under sections 1087—45 to 1087—57, inclusive, shall be unable or neglect to do so, his place may be filled by appointment by said commission. If any person required to perform any duty under sections 1087—45 to 1087—57, inclusive, shall wilfully neglect or refuse to do so, he shall forfeit to the state not less than fifty nor more than two hundred and fifty dollars. In the appointment of persons to perform services under sections 1087—45 to 1087—57, inclusive, the tax commission shall not be required to select any of such persons from the residents of the district in which the reassessment is to be made. It shall not be necessary for the said commission to wait until the assessment in any district is completed before making an order for reassessment therein under the provisions of sections 1087—45 to 1087—57, inclusive; but they shall be entitled to make such order whenever they shall be satisfied from the work already done upon such assessment that when completed it will not be in substantial compliance with law.

Amended by chap. 384, 1919.

Under sec. 1087—46 Stats., providing that the persons appointed by the tax commission to make a reassessment in a district shall, while engaged therein, "be entitled to have custody and possession of the roll containing the original assessment," it is the duty of the town clerk having possession of such roll to deliver it, upon demand, to the persons so appointed, and his wilful neglect or refusal to do so subjects him to the penalty prescribed by this section. *State v. Erickson*, 168 Wis. 600.

Inequalities may be corrected in subsequent year. SECTION 1087—57. If any such reassessment cannot be completed in time to take the place of the original assessment made in such district for said year, the clerk of the district shall levy and apportion the taxes for that year upon the basis of the original assessment roll, and when the

reassessment is completed the inequalities in the taxes levied under the original assessment shall be remedied and compensated in the levy and apportionment of taxes in such district next following the completion of said reassessment in the following manner: Each tract of real estate, and, as to personal property, each taxpayer, whose tax shall be determined by such reassessment to have been relatively too high, shall be credited a sum equal to the amount of taxes charged on the original assessment in excess of the amount which would have been charged had such reassessment been made in time; and each tract of real estate, and, as to personal property, each taxpayer, whose tax shall be determined by such reassessment to have been relatively too low, shall be charged, in addition to all other taxes, a sum equal to the difference between the amount of taxes charged upon such unequal original assessment and the amount which would have been charged had such reassessment been made in time. The tax commission, any of its members, or its authorized agent, shall at any time have access to all assessment and tax rolls herein referred to for the purpose of assisting the local clerk and in order that the results of the reassessment may be carried into effect.

The provision of this section authorizing the correction of inequalities shown by reassessments "the year next following the completion thereof" is directory. The duty imposed thereby continues until the corrections have actually been made. So held in a case where the town clerk on advice of the town board failed and refused to correct the inequalities shown by four preceding reassessments. The Supreme Court issued a peremptory writ of mandamus directing the clerk to make all the corrections on the current year's tax roll. *Attorney General v. Erickson* decided November, 1919, 170, N. W. Rep. 958.

It seems that the lien of a tax based upon a reassessment in subsequent years relates back to the time when the original assessment was made, and that such reassessed tax is a breach of a covenant against incumbrances. *Peters v. Meyers*, 22 Wis. 574; *Pier v. Fond du Lac*, 53 Wis. 429; *Flanders v. Merrimack*, 48 Wis. 567.

CHAPTER IX

COLLECTION OF TAXES BY LOCAL TREASURER; DEMAND; DISTRESS AND SALE; ACTION; DELINQUENT RETURNS

(Chapter 49 of statutes, sections 1088—1121inc.)

Lien of taxes on land, and on timber; levy. SECTION 1088. All taxes levied upon any tract or parcel of land and all costs, charges and interest thereon shall be a lien thereon until paid except as otherwise provided by law; and all costs and expenses which shall accrue jointly or in the aggregate on two or more tracts or parcels shall be apportioned in equal parts upon such several tracts or parcels; and all taxes levied upon any lands and all costs, charges and interest thereon shall also be a lien on all logs, wood and timber cut upon such lands subsequent to the first day of May in the year in which such taxes are levied; and it shall be the duty of the town treasurer, or if such taxes be returned uncollected, of the county treasurer, to pursue and levy upon such logs, wood or timber, wherever the same may be, and collect such tax by distress and sale of the same in the manner provided by law for the distress and sale of personal property for the payment of taxes.

Taxes not debts. It has been held that taxes are debts due the state, *Curtis vs. Supervisors*, 22 Wis. 167; and constitute a lien on the real estate against which they are charged on the delivery of the tax warrant to the treasurer for collection, and that in case of reassessment, such liens relate back to the time when the original assessment should have been made. *Peters vs. Meyers*, 22 Wis. 206; *Flanders vs. Merrimack*, 48 Wis. 572. But taxes are not debts in the technical sense because not based upon contract. *State vs. C. & N. W. R. R. Co.*, 128 Wis. 503. They are obligations which the person charged therewith is legally and morally under the highest obligation to pay but not debts in the strict sense. *Mariner v. Milwaukee*, 146 Wis. 605.

Taxes are not levied until extended upon the tax roll and are not a lien until then. *Spear vs. Door Co.*, 65 Wis. 208.

Notice of collection. SECTION 1089. The treasurer of each town, city or village on the receipt of the tax roll for the current year, shall forthwith post notices in three or more public places in such town, city or village, that the tax roll for the same is in his hands for collection, and that the taxes charged therein are subject to payment at his office at any time prior to or on the thirty-first day of January in such year, and after the said thirty-first day of January, he shall proceed

to collect the taxes charged in such roll and remaining unpaid, and for that purpose shall call at least once on the person taxed, or at the place of his usual residence, if within the town, city or village, and demand payment of the taxes charged to him on such roll.

The treasurer is the legal custodian of the roll, and possesses full and authentic information which it is his duty to furnish to the land-owner, who can obtain it in no other way. This rule applies when the owner asks to pay and is told by the treasurer that there are no taxes against him: *Gould v. Sullivan*, 84 Wis. 659; *Bray & Choate Land Co. v. Newman*, 92 id. 271. But the rule does not apply when the owner goes to an officer not charged with any duty relating to the matter; as, where he applies to the county treasurer in regard to redemption: *Edward v. Upham*, 93 Wis. 455.

Payment. A demand is necessary before a levy can be made: *Enos v. Cole*, 53 Wis. 235. One paying taxes has the right to rely upon the statement of the amount due made by the officer; and where the amount given was $14.21 when it should have been $14.46, a payment of the smaller amount was held sufficient on the maxim *de minimis*, etc.: *Randall v. Dailey*, 66 Wis. 285.

An illegal excess in the taxes, if known and separable, is no excuse for the non-payment of the valid portion: *Whittaker v. Janesville*, 33 Wis. 76.

Penalty for nonpayment. SECTION 1090. Taxes not paid before the first day of February shall be subject to a penalty of two per cent on the amount of the tax, which penalty shall be collected and paid into the treasury by the town, city or village treasurer. Provided that any town or village by a two-thirds vote of the town or village board, or any city of the second, third or fourth class, by a two-thirds vote of the council, may extend the time for the payment of taxes without penalty until the first day of March.

Taxes become due and payable on the third Monday in December when the clerk is required to deliver the tax roll to the treasurer for collection, sec. 1081. They may be paid without penalty at any time thereafter up to the first day of February, but if not paid before that date are subject to a penalty of two per cent unless the time for payment is extended by a two-thirds vote of the governing board of the town, city or village, as the case may be. No extension beyond the first day of March is permitted. The provision for extension does not apply to the city of Milwaukee. See Section 959—70o, page 30.

Payment in orders, etc. SECTION 1091. Town, city and village orders shall be receivable for taxes in the town, city or village where issued and shall be allowed the treasurer on settlement of such taxes; and county orders and jurors' certificates shall be receivable for taxes in the county where issued and shall be allowed the treasurer on settlement of county taxes with the county treasurer; but no town, city or village treasurer shall receive orders in payment for taxes to a larger amount than the town, city or village taxes included in his tax roll, exclusive of all taxes for school purposes, nor county orders and jurors' certificates to a greater amount than the county tax included therein.

County orders. A town treasurer is authorized to receive from a single taxpayer in county orders only a sum equal to the county tax due from him; and county orders thus received are paid and extinguished as evidences of debt; *Marinette v. Supervisors*, 47 Wis. 216.

After the statute of limitations has run on a county order it is still available in payment of county taxes: *Pelton v. Supervisors*, 10 Wis. 69.

Unless express statutory authority is given, nothing but money can be received in payment of taxes. Accordingly held that certificates issued under Sec. 1077a are not receivable for taxes. *Oneida Co. vs. Tibbits*, 125 Wis. 9; *Houghton vs. Boston*, 159 Mass. 138.

Officers not to buy orders. SECTION 1092. No town, city, village or county treasurer, or other town, city, village or county officer shall either directly or indirectly, purchase or receive in exchange or in payment for taxes or otherwise, in any manner whatever, any county, city, village or town order, or any demand against his county, city, village or town for a claim allowed by the proper board or council during his term of office for a less amount than that expressed on the face of such order or demand; and any such person so offending shall for each offense forfeit not less than twenty-five dollars nor more than two hundred fifty dollars.

This section does not absolutely prohibit public officers from purchasing orders or claims against municipalities but applies only to purchases for a less amount than that expressed on the face of such order or demand. Bona fide purchases of such claims at or above par is not unlawful. Sec. 4549.

Payment on part; undivided interests. SECTION 1093. The treasurer shall receive the tax on any part of any lot or parcel of land or on any undivided share or interest therein which the person paying the tax will clearly define; and if the tax on the remainder of such lot or parcel of land shall remain unpaid such treasurer shall return such remainder and the tax due thereon as delinquent to the county treasurer; and if the part on which the tax is so paid shall be an undivided share the person paying the same shall state to the treasurer the name of the owner of such share, that it may be excepted in case of sale for the tax on the remainder, for which purpose the treasurer shall enter the name of such owner and a specification of such share in his account of uncollected taxes; and the balance of the taxes on any such land shall be a lien on the residue only of such lot or parcel of land; provided, that when an application is made to the treasurer for the payment of the taxes upon any part or portion of any lot or parcel of land assessed as a whole, but which is owned in severalty, the treasurer, before making a receipt for the taxes upon any part or portion thereof, may ascertain from affidavits or by actual view the true proportion of taxes chargeable to the part on which the tax is sought to be paid, and the amount so found shall be deemed to be the amount of the taxes chargeable thereto.

How tax paid. SECTION 1094. When any land has been assessed more than once for the same year the treasurer shall collect only the

tax justly due thereon and shall make return to the county treasurer of the balance as a double assessment, and he shall be credited therefor by such treasurer.

County clerks; prepare and furnish tax receipts. SECTION 1095. The county clerk of each county shall prepare and cause to be printed and furnished to each town, city and village treasurer of his county a book of tax receipts for each current year, with stubs to be a duplicate of the receipts; and every town, city and village treasurer shall use only the receipts so furnished. All city treasurers, and town and village treasurers in counties having a population in excess of three hundred thousand shall enter in each receipt given by him for the payment of taxes the name of the person, firm, company or corporation paying the same, the date thereof, the description of the property, the valuation and the aggregate amount of taxes paid; town and village treasurers in counties having a population of less than three hundred thousand shall, in addition to the foregoing, give in separate columns the several amounts paid for state taxes, county taxes, town or village taxes, and all other taxes, if any, appearing on the tax roll opposite the valuations to be charged therewith. Whenever it appears from the tax roll that the taxes for the previous year remain unpaid upon any tract of land he shall enter in such receipt, under the head of "taxes unpaid for previous year," opposite such tract, the year for which such unpaid tax is due. Such receipts shall be signed by the treasurer and a duplicate thereof made upon the stub thereof to be left in the book, and after noting the payment of such taxes upon the tax roll he shall deliver said receipt to the person entitled thereto. No city, county, village or town treasurer or tax collector shall collect or receive any taxes in any room where malt or intoxicating liquors are sold, given away or otherwise disposed of. Any person violating this provision shall be punished by a fine of not less than twenty-five dollars, nor more than one hundred dollars, or by imprisonment in the county jail not less than ten days nor more than thirty days.

Amended by Chapter 259, 1919, so as to require the tax roll to show the amount of taxes levied for state, county, local and other purposes separately. See note to Section 1079 and 1079a, pages 108, 109, Supra.

A payment in good faith upon city lots described in the tax roll as the whole of such lots under an authorized plat, but really of parts thereof only, the taxpayer intending to pay the whole tax, must be treated as a payment of the taxes in full, and tax deeds issued upon a sale of such lots by the unauthorized descriptions in the roll are void: *Merton v. Dolphin*, 28 Wis. 456.

A tax roll produced and identified by the county clerk, on which appeared opposite the description of the land on which a tax deed had issued, under the column headed "Remarks," the entry "Paid April 15, '64," is sufficient and competent evidence to prove the payment of the tax, and sufficient to defeat the tax deed issued thereon. *McIntosh v. Marathon Land Co.*, 110 Wis. 296.

A tax receipt issued to the grantor of land does not estop the taxing officers from reassessing a part of the taxes covered thereby, it appearing that the grantee did not know of the receipt when he purchased: *Marco v. Fond du Lac*, 63 Wis. 212.

Comparison of stub book with tax roll; book as evidence. SECTION 1096. Every such treasurer shall each year compare the stub book of receipts with the tax roll of his town, city or village as to the description of land or other property upon which taxes have or have not been paid and as to the amount of money received for taxes; and the said treasurer shall certify on such stub book that he has made such comparison, and that the stub book and tax roll correspond; and the stub book thus certified shall be returned with the tax roll to the county treasurer, who shall file the same with the county clerk, to be by such clerk preserved in his office. Such stub book or a certified copy thereof shall have the same effect as evidence as the original receipt.

With the county clerk. It appeared that the assessment rolls were kept in the office of the county treasurer, and the tax rolls and delinquent returns in that of the county clerk. It was claimed that the books were not in proper custody, and that a presumption arose that they did not exist, under *Jarvis v. Sillman*, 21 Wis. 599, and *Hiles v. Cate*, 75 id. 91, which was not overcome by showing informal books claimed to be such rolls and return in the clerk's office. Held, that the tax deed was valid, the statute having run: *Bardon v. Land Co.*, 157 U. S. 327.

A stub receipt book, properly produced and identified, which showed payment of taxes for which a tax deed had been issued, is competent and sufficient evidence of the payment of the tax and the invalidity of such tax deed. *Pier v. Prouty*, 67 Wis. 218, distinguished. *McIntosh v. Marathon Land Co.* 110 Wis. 296.

SECTION 1097. In case any person shall refuse or neglect to pay the tax imposed upon him the treasurer shall levy the same by distress and sale of any goods and chattels belonging to such person, wherever the same may be found within his town, city or village; and if a sufficient amount of such property cannot be found in such town, city or village the treasurer may levy the same by distress and sale of the goods and chattels belonging to such person, wherever the same may be found in the county or in any adjoining counties, and shall receive therefor the fees allowed by law to constables for levy and sale of goods upon execution.

Amended by Chapter 551, 1919, as to fees allowed to constables for levy and sale under the tax warrant.

A town treasurer, for the purpose of making a levy upon certain white oak plank ponderous in its character, lying in a mill-yard in two piles ten rods apart, went there and notified a man living near that he had levied upon the lumber, and requested him to notify any one concerned that he had levied upon it and that it must not be disturbed. He at once posted up notices in three public places in the town that he had levied upon the property and would sell, etc. He did not notify the owner of the property. Held sufficient, and that a sale thereon was valid: *New Richmond L. Co. v. Rogers*, 68 Wis. 608.

Railroad chattels. The franchise and rights of a railroad company and the property necessary for its use are an entirety, and, in the absence of a statute, are not subject to sale on tax proceedings. *Chicago, etc. R. Co. v. Forest Co.*, 95 Wis. 80. So of franchises of a river improvement company: *Yellow River Imp. Co. v. Wood Co.*, 81 Wis. 554. See *C. & N. W. R. Co. v. Ft. Howard*, 21 id. 44.

Injunction will not lie to prevent a town treasurer from levying on personal property under his tax warrant. The remedy of the tax payer in such cases is to pay the tax under protest and file claim for refund of the excess under Section 1164 of the Statutes. *Keystone Co. v. Pederson*, 93 Wis. 466; *Stange Lumber Co. v. Merrill*, 134 Wis. 514; *Duluth Log. Co. v. Hawthorne*, 139 Wis. 170.

Notice and sale. SECTION 1098. The treasurer shall give public notice of the time and place of such sale at least six days previous thereto by advertisement, containing a description of the property to be sold, to be posted up in three public places in the town where the sale is to be made. The sale shall be at public auction in the daytime and the property sold shall be present; such property may be released by the payment of the taxes and charges for which the same is liable to be sold; if the purchase money on such sale shall not be paid at such time as the treasurer shall require he may again, in his discretion, expose such property for sale or sue in his name of office the purchaser for the purchase money, and recover the same with costs and ten per centum damages.

Excessive sale. When several chattels have been seized and enough of them sold to satisfy the demand the sale of the remainder is a trespass and the officer becomes liable: Cooley, Tax. (2d ed.) 496, 802; *Denton v. Carroll*, 4 Hun's App. 532.

Return of surplus; proceedings if no sale. SECTION 1099. If the property so levied upon shall be sold for more than the amount of the tax and costs the surplus shall be returned to the owner thereof; and if it cannot be sold for want of bidders the treasurer shall return a statement of the fact and return the property to the person from whose possession he took the same; and the tax, if unsatisfied, shall be collected in the same manner as if no levy had been made.

ACTION TO COLLECT TAX ON PERSONAL PROPERTY

How brought. SECTION 1100. In case the treasurer is unable to collect any tax assessed upon personal property he shall make and file with some justice of the peace of his county an affidavit showing that there is such tax upon personal property, the amount thereof and the name of the person against whom assessed, that he has demanded payment thereof and is unable to collect the same. Such justice shall thereupon issue a summons directed to such person, commanding him to appear forthwith to answer under oath and show cause why he does not pay said tax. Such summons may be served by said treasurer or any constable in said county by reading the same to such person or in his hearing; upon its appearing by the affidavit of the officer or person serving such summons that the same was duly served upon such person to whom the same was directed, and that he has failed or neglected to appear before said justice for twenty-four hours after the service of the summons, the said justice shall issue a warrant, directed to the sheriff or any constable of the county commanding him to forthwith arrest and bring such person before him.

Sections 1100 to 1107 authorize proceedings in justice court for the collection of personal property taxes which the tax payer has failed or refused to pay. Section 1107a authorizes similar proceedings in any court having jurisdiction over the subject. The latter statute is more comprehensive, and the practice prescribed thereby is simpler. Where proceedings in court are necessary to collect the tax, resort should be had to 1107a in all cases where the amount of the tax exceeds the jurisdiction of justice court.

The proceeding may be instituted by the treasurer after the return of his warrant. The statute is remedial and to be liberally construed: *Kellogg v. Oshkosh*, 14 Wis. 623, 629.

The treasurer may proceed before any justice of the county, including any justice in his town: *Hancock v. Merriam*, 46 Wis. 159.

Demanded payment. The collector's demand need not be absolutely a demand; it is sufficient if it brings home to the taxpayer the fact that the collector is there officially for the purpose of collecting the tax: *Miller v. Davis*, 88 Me. 454.

Jurisdiction; complaint; removal; arrest. SECTION 1101. The justice before whom such person shall appear or is brought shall have jurisdiction of the subject matter to the full amount of the tax against such person, with interest, charges and costs; and he shall enter the cause in his docket as an action wherein the town, city or village in which such tax is assessed shall be plaintiff and the person against whom the same is assessed shall be defendant; and the affidavit of the treasurer shall be deemed the complaint. Such defendant may, on his appearing or being brought before such justice and before submitting to an examination as hereinafter provided, remove such action to the next nearest justice in the same county upon making and filing with such justice an affidavit stating that from prejudice or other cause he believes such justice will not decide impartially in the matter: and thereupon the justice shall transmit all the papers, with a copy of his docket entries in such action, to such nearest justice; and if the defendant be under arrest the officer having him in charge shall take him before such nearest justice. Such nearest justice shall enter the action in his docket and proceed in the manner hereinafter provided; if such defendant be not under arrest and shall fail to appear before such last-named justice within one hour after the receipt of the papers in such action he may issue his warrant, directed to the sheriff or any constable of his county, commanding him to forthwith arrest such defendant and bring him before such justice.

Proceedings; costs; execution. SECTION 1102. When the defendant shall appear or be brought before the justice before whom such proceedings were commenced, or if the cause shall have been removed to another justice, before such last-named justice, such justice shall cause the defendant to be examined on oath, and hear the testimony of any witnesses or other evidence presented by either party upon the following questions:

(1) Whether the defendant had any personal property liable to taxation at the time the assessment was made.

(2) Whether he has money or property, real or personal, of any description sufficient to pay such tax or any part thereof.

(3) Whether he is justly liable for the payment of such tax or any part thereof; and if any of said questions shall be established in the negative the defendant shall be discharged with his costs; but if the defendant shall refuse to answer such relevant questions as shall be put to him or if he shall fail to establish either of said questions in the negative, judgment shall be entered against the defendant for the amount of such tax which he ought to pay, with costs of such proceedings. No stay of execution shall be allowed on any such judgment except in case of appeal; and no property of such defendant shall be exempt from levy and sale upon execution issued thereon. The justice shall reduce the examination of the defendant and of all witnesses produced and examined by either party to writing, and cause the same to be signed by the persons so examined.

If defendant refuse to answer. On appeal, where the return shows such a refusal, and no further evidence is offered, the fact that defendant has sufficient property to pay the tax is conclusively shown: *Wauwatosa v. Gunyon*, 25 Wis. 271. A general verdict "for the plaintiff" sufficiently determines in the affirmative the issue of whether the defendant has such property: Ibid.

Transcript of judgment; lien; execution. SECTION 1103. The treasurer may file a transcript of any such judgment rendered against the defendant in any such action in the office of the clerk of the circuit court of any county, and the same shall be docketed by such clerk in the same manner as other transcripts of justices' judgments, and when so docketed it shall be a lien on all the real estate of the defendants in every county in which the same is docketed. The clerk of any circuit court in which any such transcript is filed and docketed may issue execution thereon, and no real or personal estate of the defendant shall be exempt from seizure and sale on such execution; and upon the sale of any real estate of the defendant by virtue of such execution the sheriff selling the same shall make, execute and deliver to the purchaser thereof a deed of the same, and the defendant shall have no right to redeem the said real estate after the sale thereof; and such deed shall be absolute to convey all the interest, of the defendant in such real estate so sold as aforesaid, and the sheriff shall proceed in the sale of such real estate as upon sale on execution in other cases.

Appeal and return. SECTION 1104. The defendant may, within twenty days after the entry of any such judgment, appeal to the circuit court by executing and delivering to the justice an undertaking to the town, city or village, with one or more sureties to be approved by such justice, conditioned to pay any judgment the said circuit court may render against him in such action; and upon the receipt of such undertaking the justice shall return the same with the examinations and evidence taken by him and all other paper and proceedings in such action, duly certified by him, to the said circuit court. The plain-

tiff may also appeal from any such judgment or from any judgment discharging such defendant to the said circuit court in the same manner that a plaintiff to a civil action in a justice's court may appeal from a judgment rendered therein: and upon taking such appeal the justice shall make a like return to the circuit court as upon an appeal by the defendant.

Trial; duty of district attorney. SECTION 1105. Upon filing the return of the justice by the clerk of the circuit court such action shall be tried in such court as other actions therein; and the district attorney of the county shall appear for and try such action on behalf of the plaintiff whenever requested by the treasurer so to do. Upon the trial in such court either party may read as evidence the examinations taken by the justice and returned by him to such court and produce such other proofs as they may deem necessary. The issues shall be the same as before the justice; and if upon the trial in the circuit court neither of said issues shall be established in the negative, or if the defendant shall neglect or refuse to appear on such trial and answer all relevant questions which shall be put to him the judge or jury by whom such action is tried shall assess the amount of the tax which the defendant ought to pay, and judgment shall be rendered against him and his sureties in said undertaking for the amount so assessed and for all costs, fees and disbursements before the justice and the circuit court; and execution shall issue upon such judgment against the property of all the defendants in such judgment, and no property belonging to the defendant in the action shall be exempt from seizure and sale on such execution; but if either of such issues shall be established in the negative the action shall be dismissed and the defendant shall recover his costs.

Supplementary proceedings. SECTION 1106. In case execution in any such action upon a judgment rendered upon an appeal or upon a transcript of a judgment of such justice shall be returned unsatisfied in whole or in part, the proper treasurer is hereby authorized to institute proceedings supplementary to execution to collect such judgment; and all laws applicable to supplementary proceedings upon other judgments are made applicable to the judgment above mentioned.

Effect of judgment. SECTION 1107. A final judgment in such action upon the ground that the defendant had no personal property liable to taxation at the time the assessment was made or that he is not justly liable to pay any portion of such tax shall be a bar to any further proceedings of any kind for the collection of such tax; and every such judgment against the defendant, fixing the amount of tax which he ought justly to pay, shall be conclusive as to the extent of his liability; and in fixing the amount which the defendant ought justly to pay, all irregularities, mistakes and errors in the

assessment and proceedings which do not affect the justice and equity of such tax or some part thereof shall be disregarded.

Action of debt to collect tax; duty of district attorney. SECTION 1107*a*. In addition to the other remedies provided in this chapter an action of debt shall lie in the name of the town, city or village, and, after the tax is returned as delinquent, in the name of the county, for any tax assessed against any person upon personal property remaining unpaid after the last day of January. Summons in such action shall issue at the request of the treasurer of the town, city, village or county as the case may be and shall be subject to all the rules of law and practice applicable to actions of debt. Such summons when issued by a justice of the peace may in addition to the other methods of service provided by law in justice's court be served as provided in any of sections 1100, 1107*b*, or 2637, statutes of 1898. Such summons shall state that it is issued for the collection of a tax and judgment may be entered and execution issued as provided in this chapter. It shall be the duty of the district attorney upon request to attend and prosecute any action or proceeding commenced under any of the provisions of this chapter for the collection of a tax.

Notwithstanding many loose expressions in court decisions to that effect, a tax is not a debt within the strict meaning of the term because not arising out of contract and not enforcible by the ordinary remedies unless so authorized by statute. *State v. Railway Companies*, 128 Wis. 500 to 503 of Opinion. But sections 1100 to 1107a authorize an action of debt to be maintained for the collection of unpaid personal property taxes and thereby gives them the character of debts for the purpose of enforcing payment. The remedy so given is cumulative and does not exclude the right of local treasurers to levy upon personal property of the delinquent taxpayer under their warrants. See sections 1081 and 1097. *Superior v. Allouez Bay Dock Co.* 156 Wis. 177.

Action for collection of taxes against public utilities. SECTION 1107*b*. In addition to the other remedies provided by law for the collection of taxes against real estate, an action of debt shall lie in the name of the town, city or village, and, after the tax is returned as delinquent, in the name of the county, for any tax heretofore or hereafter levied upon and extended against the property of any public service corporation as defined in section 1753—1 of the statutes, which property is subject to taxation like the property of individuals, and which tax remains unpaid after the last day of January in any year. Summons in such action shall issue at the request of the treasurer of the town, city, village or county, as the case may be; shall be served as provided in section 2637 of the statutes, and such action shall be subject to all of the rules of law and practice in this state applicable to actions of debt. The complaint in such action shall be served with the summons. Judgment in such action shall be entered and execution issued thereon as in other actions of debt. The judgment shall bear interest at the rate of ten per cent per annum from the date of entry until paid.

This section authorizes the action of debt prescribed by the preceding section for the collection of unpaid personal property taxes due from public service companies; and section 1107c requires such companies to pay such taxes as levied as a condition of defending the action.

Procedure. SECTION 1107c. In any action brought pursuant to section 1107*b* it shall be sufficient to entitle plaintiff to judgment in said action to allege and prove that the tax was regularly levied and extended upon the tax roll and that the same has not been paid; provided, that the defendant may defend against such action by first paying the amount of the tax with interest, penalties and charges into the county, town, city or village treasury. The defendant in such action shall be entitled to recover judgment for the amount, if any, so paid in excess of the amount the court shall finally determine it ought to have paid on the property involved in said action, with interest from the date of such payment. Payment of any judgment so recovered by the defendant, shall be made forthwith by the treasurer of any such county, town, city or village, upon presentation of a certified copy thereof, without other or further order. He shall preserve said copy of such judgment as his warrant for such payment and shall require the satisfaction of record of such judgment upon the making of such payment.

RETURN OF UNCOLLECTED TAXES

What money to be retained; payment of state tax. SECTION 1110. The town, city or village treasurer shall retain in his hands the amount specified in his warrant, to be paid into the town, city or village treasury, and shall on or before the day specified in his warrant for paying the money therein directed to be paid to the county treasurer, pay to him the sum so directed to be paid in the manner provided by law; and the town, city or village treasurer shall pay over the full amount of state tax on or before the first Monday of March of each year, though it may occasion a deficiency in the town, city or village taxes.

The statute gives the town preference over the county in cases where the town treasurer is unable to collect all the taxes called for by his warrant, and gives him the right, after paying over the amount of state taxes, to retain the amount specified in his warrant for town taxes, paying to the county treasurer only the balance in his hands: *Winchester v. Tozer*, 24 Wis. 312; *Wolff v. Stoddard* 25 id. 503.

The time for the collection of taxes may be extended by an indorsement in proper form upon the roll signed officially by the town supervisors, each acting separately. The statute does not contemplate a meeting and formal action by the board evidenced by their record kept by the clerk. *New Richmond L. Co. v. Rogers*, 68 Wis. 608.

Treasurer's receipts, how countersigned. SECTION 1111. Whenever any town, city or village treasurer shall pay any money to the county treasurer such county treasurer shall deliver to him duplicate receipts for the amount of money so paid, specifying in such receipts the sum paid, date of payment and on what account the same is paid;

and the town, city or village treasurer shall present such receipts to the county clerk, who shall countersign one of said receipts and return the same to such treasurer, and shall retain and safely keep the other in his office; and no receipt of the county treasurer given to a town, city or village treasurer for money paid by such town, city or village treasurer shall be any evidence of such payment in favor of such town, city or village treasurer unless the same be first countersigned by the county clerk.

Delinquent taxes. SECTION 1112. If the treasurer shall be unable to collect any taxes mentioned in the tax roll annexed to his warrant within the time prescribed by law he shall make out a statement of the taxes so remaining unpaid, including the two per cent penalty provided by section 1090, distinguishing, by setting down separately, between such as are on real and such as are on personal estate, with a full and perfect description of such real estate from his tax roll, and the name of the person taxed, if therein specified, and by setting down separately all public lands which are held on contract and all lands mortgaged to the state, and submit the same to the county treasurer; he shall also include in such statement a description of any land doubly assessed and the amount of tax thereon, and also the specification and entry required by section 1093. The county treasurer shall carefully compare such statement, when submitted, with the tax roll and ascertain that it is correct.

Amended by Chapter 665, Laws of 1913, by striking out the five per cent collection fee and substituting the two per cent penalty prescribed by Section 1090.

Where a statement of taxes shows the tax as one item and the five per cent collection fees as another, it is an essential compliance with this section. It was not decided in *Pinkerton v. Gates Land Co.*, 118 Wis. 514, that the five per cent fee for collection could not be included. *Cole v. Van Ostrand*, 131 Wis. 454.

Form of return. SECTION 1113. The return of the town, city or village treasurer to the county treasurer of delinquent taxes may be made in tabular form and varied as facts may require, but when so made shall be, as nearly as convenient, after the following form:

Return of .... treasurer of the .... of ...., in the county of ...., and state of Wisconsin, containing a description of the lands and the taxes thereon, and the valuation of personal property and the taxes thereon, if any, assessed in said .... in the year .... which taxes remain due and unpaid for the years herein specified, to wit:

Names of Persons Taxed	Description of Lands and Statement of Personal Property	Section	Township	Range	Number of acres	Amount of Tax	Years for which taxes are due.	Remarks
A. B.....	N. hf. of N. E. qr.....	34	3	19	80	$5.60	18—	.....
C. D.....	Undivided $\frac{2}{3}$ E. hf. of N. E. qr.	34	3	19	53	2.74	18—	.....
do.....	do. omitted in 18—.....	34	3	19	53	2.25	18—	.....
Unknown.....	E. hf. of S. E. qr.....	18	3	19	80	2.00	18—	.....

Public lands held on contract and lands mortgaged to the state:

A. B.....	S. W. qr. of S. E. qr..	16	20	16	40	$5.50	18—	.....
A. B.....	Valuation $300	.....	.....	.....	.....	$300	.....	.....

Personal property:

The taxes on the following shares or parcels of land above returned have been paid by the following named owners:

E. F.....	Undivided hf. of the E. hf. of N. E. qr..	34	3	19	26	$1.37	18—	.....

The following land is returned as doubly assessed for the year 18..: commssion upon complaint made by the owner or owners of taxable

R. S.....	S. hf.	17	3	19	320	$9.60	18—	.....
Unknown.....	W. hf. of N. W. qr....	4	3	19	80	2.00	18—	.....

See note to next section.

Unless the return is verified the county treasurer has no authority to sell the land. All subsequent proceedings are voidable unless cured by the statute of limitations. *Cotzhausen v. Kaehler*, 42 Wis. 332.

To sustain the defense of payment of the tax, in ejectment against the original owner, the fact that it had not been returned as unpaid is strong evidence of payment: *Lewis v. Disher*, 25 Wis. 441.

Unless the return is verified the county treasurer has no authority to sell the land. All subsequent proceedings are voidable unless cured by the statute of limitations: *Cotzhausen v. Kaehler*, 42 Wis. 332.

If the town treasurer makes his return before the time fixed by law for so doing a sale of the land made for taxes thus prematurely returned unpaid is void: *Bailey v. Haywood*, 70 Mich. 188, and cases cited.

Sec. 1114, Statutes 1898, precludes recovery of delinquent taxes by the town from the county, until collection in excess of the unpaid county taxes is in fact made. *Town of Iron River v. Bayfield Co.*, 106 Wis. 588.

No presumption arises that taxes on lands, returned as delinquent, have been collected by the county. Ibid.

Treasurer's affidavit; delinquent taxes. SECTION 1114. (1) The town, city or village treasurer shall then make an affidavit to be annexed to such statement, before the county treasurer or before any officer authorized to administer oaths, that the facts set forth in said statement are correct, that the sums therein returned as unpaid taxes have not been paid, and that he has not, upon diligent inquiry, been able to discover any goods or chattels belonging to the persons charged with such unpaid taxes whereon he could levy the same, which statement and affidavit shall be filed with the county treasurer; and he shall thereupon be credited by the county treasurer with the amount of taxes so returned as unpaid and doubly assessed, except the penalty provided by section 1090, and he shall be allowed by the county treasurer, in settlement one dollar and six cents for each mile traveled one way to deliver the same.

(2) If any actions have been commenced by him for the recovery of any personal property tax he shall also state that fact and what proceedings have been had therein. And any town, city or village treasurer who shall render his return without duly making, annexing, subscribing and making oath to the affidavit as above required shall forfeit one hundred dollars; and every county treasurer who shall receive such return, and credit the amount of unpaid and doubly assessed taxes to the town, city or village treasurer, without first requiring such return to be duly verified by affidavit as above required shall forfeit two hundred dollars; and neither said town, city or village nor county treasurer shall be permitted to offer such unverified statement in evidence in any settlement made by them with their respective boards of supervisors or auditing officers nor in any action brought against them on their respective official bonds, nor in any prosecution against them for embezzlement.

(3) All taxes so returned as delinquent shall belong to the county and be collected, with the interest and charges thereon, for its use; and all actions and proceedings commenced and pending for the collection of any personal property tax shall be thereafter prosecuted and judgments therein be collected by the county treasurer for the use of the county; but if such delinquent taxes, exclusive of the penalty provided by section 1090, exceed the sum then due the county for unpaid county taxes such excess, when collected (with the interest and charges thereon), shall be returned to the town, city or village treasurer for the use of the town, city or village.

Amended by Chap. 551, 1919.

The principle of the statute is that the county shall assume all delinquent taxes of every nature which have been legally levied in the several towns of the county and in those municipalities therein which

are under the general statute and the county reimburses itself out of the proceeds of the sales of such delinquent taxes for such delinquent taxes or out of the lands sold in case the county is the purchaser. *Sheboygan v. Sheboygan*, 54 Wis. 415.

Court decisions. It does not follow as an incident of the county's ownership of delinquent taxes that the county board can remit or give them away. *Cranton v. Forest Co.*, 91 Wis. 239.

The amount "due the county for unpaid county taxes" is the sum which equals in amount the county tax with interest allowed thereon by statute and all the charges fixed by law and those necessarily incurred in performing this public duty. The excess over this amount is to be returned to the town treasurer. *Spooner v. Washburn Co.*, 124 Wis. 24.

The provisions of sec. 1114 preclude the recovery of delinquent taxes by the town from the county until collection in excess of the unpaid county taxes is in fact made. *Town of Iron River v. Bayfield Co.*, 106 Wis. 587.

A tax levied to pay a judgment against a town is a tax and not a special assessment and is within the provisions of this section so that the judgment creditor cannot compel the payment to him of any of the delinquent taxes. *State v. Bell*, 111 Wis. 601.

This section deals with relation between cities and counties with respect to the collection of taxes and does not affect the relations between the holder of street certificates or street improvement bonds and the city as trustee for collection. The city in such a case is responsible for the execution of its trust but is not affected because of the methods of accounting provided by statute as between the city and the county. *Jewell v. Superior* 67 C. C. A. 623, 135 Fed. 19. Certiorari denied, 198 U. S. 583, 25 Sup. Ct. 801.

The plain intent of the law is that special assessments remain the private property of the improvement certificate holders from first to last, and by necessary implication, the assessments extended on the tax roll to discharge special assessment liens must be returned delinquent separate from all other taxes and thereafter be inforced separate from all other taxes down to and including the issuance of certificates of sale. *State ex rel. vs. Hobe*, 106 Wis. 411.

Certificate of delinquent taxes. SECTION 1115. The county treasurer shall, at the time the town, city or village treasurer makes his return to him of the delinquent taxes aforesaid, make and deliver to such town, city or village treasurer a certificate of the amount of the delinquent taxes so returned by such town, city or village treasurer, specifying the amount delinquent on real estate and the amount on personal property; and it shall be the duty of the town, city or village treasurer to whom such certificate is given forthwith to deliver the same to the county clerk, who shall file the same in his office; and no county treasurer shall indorse the bond of such town, city or village treasurer, filed in his office, as satisfied and paid until such certificate shall be delivered to the county clerk and filed in his office as above specified.

How treasurer's bond satisfied. SECTION 1116. Upon filing said certificate by the town, city or village treasurer and upon payment to the county treasurer of the full amount of the state tax and the full amount of the county taxes, after deducting the amount of delinquent

taxes so returned and certified and his fees for making such return, the county treasurer shall indorse the bond of such town, city or village treasurer, filed in his office, as satisfied and paid; and the indorsement so made shall operate as a full discharge of such town, city or village treasurer and his sureties from the obligations of such bond unless it shall afterwards appear that the return of such town, city or village treasurer was false; in which case such bond shall continue in force, and such treasurer and his sureties shall be liable to be prosecuted thereon for all deficiencies and for all damages occasioned by such false return.

Penalty for failure to settle taxes. SECTION 1117. If any town, city or village treasurer shall fail to make settlement of the taxes included in his tax roll within the time required by law the county treasurer shall charge such town, city or village treasurer five per centum damages and ten per centum interest per annum from the day payment should have been made on the balance of unsettled taxes due from him; and if any town, city or village treasurer shall withhold the payment of any public moneys collected or received by him, after the same should be paid and shall have been demanded, he shall pay ten per cent damages and ten per cent interest, as above specified, on such moneys; which moneys, damages and interest may be collected by action upon such town, city or village treasurer's bond.

The five per cent penalty provided by this section for failure to make settlement for taxes within the time prescribed was held not to apply in a case where the city treasurer withheld highway taxes by direction of the common council pending the outcome of litigation to test the constitutionality of the highway aid law. *Rinder v. City of Madison*, 163 Wis. 525.

Where a town treasurer makes a return as to the amount of taxes in excess of the amount actually paid, made up of the value of certain certificates which were improperly accepted by the treasurer in lieu of taxes, and such return does not indicate what taxes such certificates were accepted in lieu of, the treasurer cannot deny the receipt of the taxes returned as actually paid, and is liable with the sureties for the penalty imposed by this section. *Oneida Co. v. Tibbetts*, 125 Wis. 9.

Warrant; levy; breach of bond. SECTION 1118. If any town, city or village treasurer shall neglect or refuse to pay to the county treasurer the sums in his hands required by law to be paid to him, or if he shall neglect or refuse to account for moneys required by law to be collected and paid by him to the county treasurer, such county treasurer shall issue a warrant under his hand, directed to the sheriff of the county, commanding him to levy such sum, specifying the amount thereof, as shall remain unpaid or unaccounted for, with interest and damages as specified in the preceding section, together with his fees for collecting the same, of the goods and chattels, lands and tenements of such town, city or village treasurer, and pay the same to the county treasurer, and return such warrant within sixty days from the date thereof and deliver the same to the sheriff, who shall immediately

cause the same to be executed and make return thereof within the time therein specified, and pay to such county treasurer the amount required by such warrant or so much thereof as he shall have collected thereon; and such sheriff shall be entitled to collect and receive the same fees as are allowed by law to sheriffs on execution. Nothing in this section shall prohibit prosecution of such treasurer's bond in case of a breach thereof.

False or negligent return. SECTION 1119. If any sheriff shall neglect to return any such warrant or to pay the money collected thereon within the time limited for the return of such warrant, or shall make a false return thereto, the county treasurer shall forthwith proceed to collect of him the whole sum directed to be levied by such warrant in the same manner as such sheriff might be proceeded against for neglecting to return an execution in a civil action; and if he shall fail to collect such money of the sheriff he shall forthwith cause a prosecution to be commenced against him and his sureties on his official bond for the sum due on such warrant, which sum, when collected, shall be paid into the county treasury.

Damages. SECTION 1120. If any person shall be injured by the false return or fraudulent act of any town, city or village treasurer such person shall recover upon action brought on the bond of such treasurer, of him and his sureties, double damages and costs of suit.

THE COLLECTION AND PAYMENT OF TAXES BY COUNTY TREASURERS.

To state treasurer. SECTION 1121. The several county treasurers shall pay to the state treasurer, the amount of state taxes charged to their respective counties, on or before the second Monday of March in each year. They shall pay to the state treasurer, the amount of income taxes charged to their respective counties under the provisions of section 1087*m*—23 of the statutes, on or before the first day of May in each year.

Amended by Chap. 140, 1915, by extending the time for payment of state taxes from the third Monday of February to the first Monday of March. The provision requiring the payment of the state's share of income tax collected on or before the first day of May in each year was added by Chap. 628, 1917.

Fees to be collected. SECTION 1144. The two per cent penalty prescribed by section 1090 on the delinquent tax list returned by the treasurer of any town, city or incorporated village to the county treasurer shall be collected by the county treasurer in the same manner as other delinquent taxes are collected and paid into the county treasury for the use of the county.

DELINQUENT TAXES ON LANDS, PUBLIC OR MORTGAGED TO STATE.

Not to be sold. SECTION 1145. It shall not be lawful for any county, city or village treasurer to sell any public lands held on contract or any lands mortgaged to the state for delinquent taxes; but if the taxes on any such lands returned delinquent shall not be paid on or before the first day of April in each year, together with interest thereon at the rate of twelve per centum per annum from the first day of January next preceding, the county treasurer shall immediately forward to the state treasurer a certified list of said lands and the amount of said taxes on each description, with interest and charges added.

A sale and deed in violation of this statute are void. *Reynolds v. Weiss*, 27 Wis. 450.

Proceedings. SECTION 1146. The treasurer shall charge such returned taxes, interest and charges against the lands upon which such taxes are assessed; and if the amount thereof is not paid on or before the first day of June next succeeding he shall add thereto fifteen per cent, and the same, with such fifteen per cent added, shall be collected with other charges against said lands, and when collected shall be added to the appropriate fund; and so much of the amount returned, together with the fifteen per cent added as aforesaid as shall have been collected, shall be entered to the credit of the proper county quarterly, and shall offset an equal amount of state tax charged to said county; but if the amount so collected in any quarter shall exceed the amount then due from such county for state tax the state treasurer shall pay to the county treasurer of such county such excess.

State treasurer to furnish lists of taxes paid, etc. SECTION 1147. The treasurer shall forward quarter yearly to the several county treasurers a list of all public lands and lands mortgaged to the state, located in their respective counties, on which the taxes and interest and penalty on the taxes shall have been collected and paid into the state treasury; such list shall state the amount of taxes, interest and penalty paid on each separate tract of land contained therein, and shall designate each such lot or tract of land separately, and, when not included in any city or village plat, showing the sections, township and range in which the same is embraced.

Taxes to be credited. SECTION 1148. Immediately upon the receipt of such list by any county treasurer he shall ascertain the aggregate amount of such taxes, interest and penalty collected on such lands in each of the towns, cities and villages in his county; and when the amount of such taxes, interest and penalty shall have been credited to such county or paid over to such county treasurer as provided by law he shall credit the proper towns, cities and villages in his county with such part of said taxes, interest and penalty, collected on lands embraced therein, as shall then be due to them respectively.

Return of public lands on which taxes unpaid. SECTION 1149. If the taxes on any of the public lands held on contract or on lands mortgaged to the state, situated in any city or incorporated village any officer of which may be authorized to sell lands for the payment of taxes, shall not be paid during the time required by law therefor, the treasurer of such city or village shall return a list of such lands to the county treasurer, at the time and in the manner fixed by law for town treasurers to return lists of such delinquent lands, and the county treasurer shall include the same in his list returned to the state treasurer; and any provision to the contrary in any city or village charter or special act is hereby repealed.

See note to section 1046, p. 65.

CHAPTER X

COLLECTION OF TAXES CONTINUED; BY COUNTY TREASURER; WARRANT TO SHERIFF; TAX SALES; NOTICE; TAX CERTIFICATES

(Sections 1122 to 1143, inclusive.)

Treasurer's duty and liability if state taxes not paid. SECTION 1122. Every county treasurer who does not pay the full amount due from his county for state taxes at the time required by law for the payment thereof shall, at the time for making such payment, file with the state treasurer an affidavit stating that he has returned and paid into the state treasury the whole amount of the state taxes which have come into his hands, and specifying the amount received from each town, city and village; and if any such county treasurer shall fail to make and file such affidavit and pay into the state treasury the whole amount of state taxes which shall have come into his hands he shall, in addition to other penalties prescribed by law, forfeit one thousand dollars, which shall be collected for the benefit of the state upon the official bond of such treasurer.

Additional liability. SECTION 1123. Whenever any county treasurer shall fail to pay into the state treasury any moneys in his hands for that purpose at the time prescribed by law he shall, in addition to other penalties, be liable to the following: If he shall so fail for the space of ten days he shall forfeit to the state twenty per cent on the amount withheld, and if he shall fail to pay over such moneys for the space of thirty days after such specified time he shall forfeit his office of treasurer.

Penalties upon counties. SECTION 1124. When any county shall fail, neglect or refuse to pay to the state treasurer the whole or any part of the state tax lawfully apportioned to and levied upon such county at the time and in the manner required by law such county shall pay to the state treasurer, in addition to the amount so due and unpaid on such tax, interest at the rate of ten per centum per annum from the time such tax was due and payable, until the same, together with such interest thereon, shall be fully paid. The secretary of state shall annually, at the time he is by law directed to apportion the state tax, add to the amount charged to each county respectively all amounts which may be due the state and unpaid from such county on

any former tax, together with interest thereon at the rate aforesaid up to the first day of January following such apportionment; and the amount so found shall be the amount of the state tax to be paid by such county for the year, and shall be certified, levied, collected and paid into the state treasury as provided by law; and any money in the state treasury or which may come therein at any time prior to the payment of such delinquent tax by such county, on account of any appropriation made to such county by the legislature or otherwise, except money belonging to the school fund income, shall be retained by the state treasurer, and he shall apply the same, or such part thereof as may be necessary, to fully pay such delinquent tax, with interest thereon.

Payments to local treasurers. SECTION 1125. Each county treasurer shall pay to the several town, city or village treasurers in his county, on demand, all money collected or received by him and belonging to such town; but he may retain in the county treasury all amounts due from any town, city or village to the county.

Though the purchase of land by the county at a tax sale is not a collection of the tax within the meaning of sec. 1114, stats. 1898, yet the taking of a tax deed, vesting the title in the county and giving it full power of disposition, is such collection, and the county is chargeable in such a case with the redemption value of the tax certificate at the time the deed was executed, and for the redemption value of outstanding tax certificates on the land, as well as all subsequent taxes remaining unpaid which were levied while the county owned the land. *Spooner v. Washburn Co.*, 124 Wis. 24.

Where the county board, without authority of law, and not under secs. 1155, 1184, or 1210g, Stats. 1898, "compromised" or "cancelled" unpaid delinquent taxes or ordered that outstanding certificates be transferred at less than their face value, the county is chargeable with the face value of the tax, interest, and charges up to the date of such compromise, cancellation, or transfer. *Spooner v. Washburn Co.*, 124 Wis. 24.

COLLECTION OF DELINQUENT PERSONAL TAX BY COUNTY TREASURERS.

Proceedings. SECTION 1126. The county treasurer shall annually, within thirty days after the several town treasurers shall have made their returns of the delinquent taxes as provided by law, make a schedule of all the taxes on personal property in his county so returned delinquent and which shall remain unpaid at the time of making such schedule, including the two per cent penalty. Such schedule shall also contain all taxes on personal property in said county returned by said town treasurers as unpaid for the two years next preceding those last returned and which shall have remained uncollected at the date thereof, and may be in the following form, to wit:

Schedule of taxes assessed on personal property for the years 19... 19.. and 19.., and which were returned as provided by law by the several town treasurers of the county of ....., as delinquent and unpaid and which remain unpaid on this .... day of ...., A. D. 19..:

Names of Persons Taxed	Amount of taxes due	Years for which taxes are due
A. B.	$10.50	19..
C. D.	7.50	19..
E. F.	12.50	19..
G. H.	10.50	19..

The county treasurer shall, within the time aforesaid, annex to such schedule a warrant under his hand, directed to the sheriff of his county, commanding him to collect from each of the persons and corporations named in said schedule the amount of the unpaid taxes set down in such schedule opposite to their respective names, with interest at the rate of twelve per centum per annum from the first day of January next preceding the time when such taxes were returned unpaid, together with his fees for collecting the same, of the goods and chattels, lands and tenements of said persons and corporations respectively, and to pay the same to the county treasurer, and to make return of such warrant within sixty days after the date thereof; and such treasurer may issue a special warrant or warrants, in any convenient or proper form, to the sheriff of any other county commanding the collection of the delinquent personal property tax of any one person or of several persons in the discretion of the treasurer; and such last-named warrants may be issued at any time while such tax remains unpaid. The county treasurer may renew, by indorsement thereon, such general or special warrants from time to time, either before or after the return thereof, for sixty days at one time and not longer than one year after the date thereof.

The duty imposed on county treasurers by this section relating to the collection of unpaid personal property taxes is too often neglected. The requirement of the statute is plain and no reason is apparent why its terms should not be complied with. The section applies to unpaid income taxes as well as to personal property taxes. See section 1087*m*—22.4 of income tax laws.

Powers of sheriff; actions; attachment; garnishment, etc. SECTION 1127. The sheriff to whom any such warrant shall be delivered shall proceed in the same manner and with the same power to collect the unpaid taxes specified in the schedule or warrant as he would upon execution issued out of a court of record. And the county treasurer or any person in his behalf who is interested in the collection of said tax may make the necessary affidavit for garnishee proceedings or attachment, and thereupon any competent court shall have jurisdiction of the same. Such affidavit need not state that such indebtedness or property is not exempt by law from sale on execution, but shall state that the indebtedness is for a delinquent personal property tax instead of stating that it is on contract or judgment. Such affidavit may be amended as in other cases. In case any of such taxes shall be returned

unpaid in whole or in part the said treasurer may, at any time within six years thereafter, bring an action or actions in the name of his county to recover such unpaid taxes and the costs and charges thereon against the persons or corporation charged therewith in any court of competent jurisdiction; and no law exempting any goods and chattels, lands and tenements from forced sale under execution shall apply to a levy and sale under any of said warrants or upon any execution issued upon any judgment rendered in any such action; and upon the return of such general warrant the county treasurer is also authorized to institute against any person charged with any personal tax which remains uncollected supplementary proceedings for the collection thereof; and all laws applicable to such supplementary proceedings upon judgments are made applicable to the proceedings hereby authorized, except that if such delinquent is a resident of this state such proceedings shall be instituted before some proper officer of the county in which the person proceeded against resides, otherwise in any county in the state. The tax roll and town treasurer's warrant and return, or abstracts therefrom, certified by the county treasurer under his seal of office, shall, upon the trial of any such action or proceedings authorized by this section, be presumptive evidence of such tax, of its being unpaid and of the amount unpaid, and in supplementary proceedings the same presumptions shall be entertained in favor of the validity of the tax and tax proceedings as in favor of a judgment and execution.

The warrant of the county treasurer delivered to the sheriff as required by the preceding section has all the force and effect of an execution and the sheriff may levy on any property of the delinquent tax payers whether real or personal to enforce the tax. No property is exempt from seizure and sale under the warrant for the collection of delinquent taxes. *State v. Wharton*, 115 Wis. 463 of Opinion.

May be charged to towns. SECTION 1128. The county treasurer, after one year from the time any delinquent personal property tax shall have been returned to his office by the treasurer of any town and upon filing in his office the affidavit of the sheriff, his deputy or undersheriff, stating that such tax is uncollectible, shall charge the same back to such town, city or village and certify the same to the county clerk, who shall add the same to the next county tax apportioned thereto; but if any such tax shall be thereafter collected by the county treasurer the amount so collected shall be credited to such town, city or village.

Under Sec. 1186, Stats., the county board has power to direct a reassessment of taxes justly chargeable upon lands in all cases where under Sec. 1184, Stats. 1898, the county is liable to refund the money paid it on account of the invalidity of a tax certificate or tax deed due to irregularities in the tax proceedings and embraces a case where a tax is void on account of misdescription in assessment where the county board can ascertain from the original description the lands attempted to be assessed. *Roberts v. Waukesha Co.*, 140 Wis. 593.

See also secs. 1135, 1149 and 1155.

Payment on undivided share; apportionment. SECTION 1129. Any person may discharge the taxes on any parcel of land returned to the county treasurer as delinquent or on any part thereof or undivided share therein, by paying the same, with interest at twelve per centum from the first day of January previous and all lawful charges thereon, to such county treasurer at any time before the same shall be sold as hereinafter provided; and upon such payment the treasurer shall execute duplicate receipts therefor, countersigned by the county clerk, showing the name of the person paying the same, the date of the receipt, the description of the property on which the tax was paid and the aggregate amount of taxes, interest, costs and charges paid, one of which shall be delivered to such person and the other filed by the county clerk; provided, that when an application is made to the county treasurer for the payment of the taxes upon any part or portion of any lot or parcel of land assessed as a whole, but which is owned in severalty, such treasurer, before making a receipt for the taxes upon such part or portion thereof, may ascertain by affidavits or by actual view the true proportion of taxes chargeable to the part on which the tax is sought to be paid, and the amount so found shall be deemed to be the amount of taxes chargeable thereto.

For a corresponding provision relating to the payment of taxes on an undivided or several interests in real estate assessed as a unit, see section 1093, page 133, supra.

The five per cent collector's fees included in the amount paid to the county treasurer belong to the county. *Supervisors v. Hackett*, 21 Wis. 613.

THE ADVERTISEMENT OF REAL ESTATE FOR SALE FOR TAXES.

List of delinquent lands; notice of sale; illegal publication. SECTION 1130. The county treasurer shall, on the fourth Monday of April in each year, make out a statement of all lands upon which the taxes have been returned as delinquent and which then remain unpaid, except public lands held on contract and lands mortgaged to the state, containing a brief description thereof, with an accompanying notice stating that so much of each tract or parcel of land described in said statement as may be necessary therefor will, on the second Tuesday in June next thereafter and the next succeeding days, be sold by him at public auction at some public place, naming the same, at the seat of justice of the county, for the payment of taxes, interest and charges thereon; and if in any county no seat of justice shall be established then at such public place therein as he may select; and cause such statement and notice to be published in a newspaper printed in his county, if there be one, and if there be none, then in a newspaper printed in an adjoining county, if there be one, but if there be no newspaper printed in the same or an adjoining county, then such statement and notice shall be published in the official state paper, which statement and notice shall in all cases be published once in each week for four successive weeks prior to said second Tuesday in June; and such treasurer shall also, at least four weeks previous to said day,

cause to be posted up copies of said statement and notice in at least four public places in such county, one of which copies shall be posted up in some conspicuous place in his office; but it shall be unlawful for any county treasurer to publish such statement and notice in any newspaper in his county that has not been regularly and continuously published in such county once in each calendar week for at least two years immediately before the date of such notice, if there be a newspaper which has been so published in such county; and any county treasurer who shall violate the provisions of this section shall forfeit a sum equal to the fees allowed by law for such publications, to be sued for and recovered in a civil action brought in the name of the state of Wisconsin, one-half of such penalty to be paid to the informant and the other half into the school fund. And it is hereby made the duty of the district attorney of the proper county, on complaint being made, to prosecute such action; provided, no county treasurer shall be liable to any penalty or to the forfeiture of any sum whatever for causing such publication to be made in a weekly newspaper published in such county for two years or more next prior to the date of said treasurer's statement and notice when, by reason of accident or other cause, more than one week has intervened between the dates of its actual issue to subscribers, if such delay at any time shall not have exceeded three days, but every such newspaper, for all the purposes of this section, shall be deemed to have been regularly published once in each week as hereinbefore provided; provided further, that when any new county shall have been formed and organized the provisions of this section concerning the competency of newspapers to publish the county treasurer's statement and notice herein provided for shall apply to any newspaper or newspapers which shall have been regularly and continuously published within the territorial limits of such county for two years previous to its formation and organization.

Date of preparing statement and notice of sale changed from the first to the fourth Monday of April, and date of sale changed from the third Tuesday in May to the second Tuesday in June by Chapter 140, laws of 1915.

Notice of sale. See section 1132, note. If the notice be not signed by the treasurer the sale is void. *Hart v. Smith*, 14 Wis. 213.

A publication for twenty-six days is insufficient and the tax due thereby avoided. *Eaton v. Lyman*, 33 Wis. 34.

Court decisions. Where the affidavit of posting stated a posting in four public places, but not that one copy was posted in some conspicuous place in the county treasurer's office, the deed was held invalid, it being presumed that this was the only proof on file. *Jarvis v. Silliman*, 21 Wis. 600. Where the affidavit stated a posting of one copy at the office of county treasurer, held fatally defective. *Hilgers v. Quinney*, 51 Wis. 62.

A certificate and deed are invalidated by a finding that there was no proof that the notice of sale was posted in the treasurer's office. *Morrow v. Lander*, 77 Wis. 77.

The county board has no power to absolve the treasurer from the performance of any duty imposed upon him by this section; he must proceed to advertise and sell lands returned as delinquent, notwith-

standing the board has assumed to remit the taxes thereon. For failing so to do he is liable to persons injured. *Crandon v. Forest Co.*, 91 Wis. 239.

The last publication refers to the last issue of the paper in which the statement and notice were legally published and not to the completed period of publication. *Chippewa River Land Co. v. J. L. Gates L. Co.*, 118 Wis. 345, *Pinkerton v. J. L. Gates Co.* 118 Wis. 514.

A notice of the sale of land for taxes which stated that the sale would be in a certain town but without stating where such sale would take place, does not name the public place where the sale is to be made as required by this section. *Midlothian Iron Mining Co., v. Dahlby*, 108 Wis. 195.

A tax deed reciting that the sale was made at the office of the county treasurer shows a valid sale. *Washburn Land Co. v. Railway Co.*, 124 Wis. 305.

Contracts; bids; bond; forfeiture. SECTION 1131. In every county where the number of the descriptions in the list of lands to be advertised for sale for the nonpayment of taxes by the county treasurer shall exceed four thousand the county treasurer shall let by contract the publication of such list to the lowest bidder, upon a notice written or printed, to be delivered to and left with the publisher or one of the publishers of each newspaper in his county at least five days prior to the time at which such contract shall be let; but no such contract shall be made to publish such list in any newspaper which has not been regularly and continuously published once in each week in such county for at least two years prior to the time at which such publication shall be by law required to be made unless there be no such newspaper so published in such county; and the contract price for the publication of such list shall in no case exceed the amount now or which shall be hereafter prescribed by law as the maximum price for publishing such list. All bids shall be written and sealed and accompanied by a good and sufficient bond, in the sum of at least five thousand dollars, conditioned that the work will be promptly performed. Any county treasurer who shall wilfully refuse or neglect to perform any duty enjoined by this section or who shall keep back and not report any delinquent lands for the purpose of avoiding the provisions of this section shall forfeit the full amount of his official bond, one-half of which when collected shall be paid to the person prosecuting therefor and the residue shall be paid into the treasury of the county for the use of the school fund; provided, that when any new county shall have been formed and organized the provisions of this section shall apply to any newspaper or newspapers which may have been regularly and continuously published within the territorial limits of such new county for two years previous to the formation and organization of such new county.

Section 675 of the statutes authorizes county boards to provide for publication of official proceedings including notices of tax sales in newspapers printed in a foreign language, provided that such notices be also published in the English language.

For discussion of the question of the publication of legal notices in a foreign language, see *State v. Chamberlin*, 99 Wis. 503; *Hyman v. Susemihl*, 137 Wis. 296. For special provision relating to notice of tax sale in the city of Milwaukee, see next section.

Notice of tax sales in cities of the first class. SECTION 1131a. In all counties containing a city of the first class the statement and description, provided for in section 1130 of the statutes, of lands upon which taxes have been returned as delinquent, shall not be published as provided in sections 1130 and 1131 of the statutes, but it shall be sufficient in such counties to publish a notice, once each week for four successive weeks, in three daily newspapers published in the English, German and Polish language stating that all tracts or parcels of land upon which the taxes remain unpaid will be sold at a time and place specified in such notice, which time and place shall be the same as is provided in section 1130 of the statutes.

Affidavits of publication and posting. SECTION 1132. Every printer who shall publish such statement and notice shall, immediately after the last publication thereof, transmit to the treasurer of the proper county an affidavit of such publication made by some person to whom the fact of publication shall be known; and no printer shall be paid for publishing any such statement and notice who shall fail to so transmit such affidavit on or before the date fixed for such sale; and the county treasurer shall also make or cause to be made an affidavit or affidavits of the posting of such statement and notice as above required, which affidavits together with the affidavit of publication, shall be carefully preserved by him and deposited as hereinafter specified.

If no affidavit of the posting is made the sale is void. *Pier v. Oneida Co.*, 93 Wis. 463. The want of an affidavit of posting cannot be supplied by parol, though the posting was actually done according to law. *Iverslie v. Spaulding*, 32 Wis. 341.

The affidavit should show how long before the sale the notice was posted. *Hewitt v. Butterfield*, 52 Wis. 384. It must state that it was posted at least twenty-eight days before. *Ward v. Walters*, 63 Wis. 39.

An affidavit of the county treasurer under this section which omitted to state in which county the notices were posted, and which stated that the notices were posted in a conspicuous place at certain street corners, was held defective for the failure to state the county and because a conspicuous place was held to be not necessarily a public place. *Myrick v. Kahle*, 120 Wis. 57.

Note by commission. Prior to 1905 this section required the printer to file the affidavit within six days after the last publication, and provided that in case of failure to do so, the printing fee should not be paid. In this state of the law, the inclusion of the printer's fee in the certificate of tax sale was held fatal to the tax deed based thereon. *Chippewa Land Co. v. J. L. Gates Co.*, 118 Wis. 345. But under the amendment requiring the affidavit of publication to be filed "on or before the date fixed for such sale," the filing of such affidavit any time before the date of sale is probably sufficient.

Section 1132*a* created by Chapter 35, 1905, validating payments made to printers prior thereto, notwithstanding failure to file the affidavit of publication within the time required, was repealed by Chap. 679, 1919, as obsolete.

Fee for advertising. SECTION 1133. 1. The printer who shall publish the list and notice of sale of lands for taxes shall receive for all

insertions not to exceed twenty-five cents for each tract or lot of land in such list not exceeding one thousand and fifteen cents for each tract or lot of land in such list in excess of one thousand, except that when the same is published under contract, as provided in section 1131, he shall receive the compensation fixed by such contract and no more. The compensation paid for such publication shall in all cases be apportioned equally upon the several parcels of land advertised; and whenever such list of lands shall also be published in a newspaper published in any other than the English language, in pursuance of an order of the county board made in accordance with the provisions of section 675, the compensation paid for such publication shall also be apportioned equally upon the several parcels of land advertised.

2. When the list of lands above referred to shall not exceed one hundred parcels in number then the compensation for the publication of the same shall be at the rate of sixty cents per folio for the first insertion and thirty-five cents per folio for each subsequent insertion and the compensation for such publication shall be apportioned equally upon the several parcels of land advertised.

The legislature may change such fees although contracts between counties and individuals may be thereby affected. *Pott v. Supervisors*, 25 Wis. 506.

Officers not to be interested. SECTION 1134. It shall be unlawful for any town or county officer or county board to make any contract or agreement with the printer or any other person by which the said fees or compensation or any part thereof, or the fees and compensation hereinafter provided for the publication of the notice of the time when redemption of lands sold for taxes will expire or any part thereof, may or shall, directly or indirectly, inure to the use or benefit of any such town or county officer; and if any such officer or printer shall violate the provisions of this section he shall forfeit not less than two hundred and fifty nor more than one thousand dollars.

SALE OF REAL ESTATE FOR TAXES.

How made. SECTION 1135. On the day designated in the notice of sale the several county treasurers shall commence the sale of those lands on which the taxes, interest and charges shall not have been paid and shall continue the same from day to day, Sundays excepted, until so much of each parcel thereof shall be sold as shall be sufficient to pay the taxes, interest at the rate of twelve per centum per annum upon the amount of such taxes and collector's fees from the first day of January next preceding the day of sale, and charges thereon, and all moneys received on such sale shall be paid into the county treasury; but if the treasurer shall discover before the sale that on account of irregular assessment or for any other error any of said lands ought not to be sold, he shall not offer the same for sale, and report the lands so withheld from sale to the county board at the next session thereof with his reasons for withholding the same.

We have been unable to find any judicial construction of this section. In view of the rule applicable to the collection of personal property taxes requiring the taxpayer to pay the tax under protest and then apply for refund and the corresponding provisions requiring owners of real estate to pay the amount of taxes properly chargeable thereto as a condition of relief and the liberal provisions for refund prescribed by sections 1164 and 1184, it would seem that land should not be withheld from sale except on positive information and for substantial reasons. If the property was exempt from taxation or taxes have been paid thereon, the land should, of course, be withheld from sale. In all other cases it is believed that public policy would be best served and the rights of taxpayers sufficiently protected by following the regular course for the collection of the tax, and remitting the taxpayer to the ordinary remedies for recovery of illegal taxes.

Who to be purchaser; order of sale. SECTION 1136. The person offering at such sale to pay the taxes, interest and charges on any tract of land for the least quantity thereof shall be the purchaser of such quantity, which shall be taken from the north side or end of such tract, and shall be bounded on the south by a line running parallel with the northerly line thereof, if such line be a single straight line, otherwise the south line of the portion so sold shall run due east and west; and in case no bid be made for the payment of the taxes, interest and charges on any such tract of land for a portion thereof then the whole of such tract shall be sold.

A municipal corporation cannot purchase at a tax sale without special statutory authority, which must be strictly construed and strictly pursued. *Knox v. Peterson*, 21 Wis. 247; *Eaton v. Supervisors*, 44 id. 489. Counties, cities and villages, and other municipal corporations so called, but not towns or school districts, can purchase at tax sales. Ibid. Nor can a town be an assignee of a tax certificate. See section 1140, note.

Payment. SECTION 1137. The county treasurer may, in his discretion, require immediate payment of every person to whom any such tract or parcel thereof shall be struck off; and in all cases where the payment is not made within twenty-four hours after the bid he may declare such bid canceled and sell the land again or may sue the purchaser for the purchase money and recover the same, with costs and ten per cent damages; and any person so neglecting or refusing to make payment shall not be entitled after such neglect to have any bid made by him received by the treasurer during such sale.

The treasurer cannot sell or assign certificates except for cash. An executory contract for their sale is void. *Smith v. Supervisors*, 44 Wis. 86. A stipulation to credit renders the sale invalid against the owner of the land. *Cushing v. Longfellow*, 26 Me. 306.

When treasurer to buy. SECTION 1138. If any tract of land cannot be sold for the amount of taxes, interest and charges thereon it shall be passed over for the time being, but shall, before the close of the sale, be re-offered for sale; and if the same cannot be sold for the amount aforesaid the county treasurer shall bid off the same for the county for such amount.

Municipal corporations cannot purchase at tax sales or become assignees of tax certificates without express statutory authority. *Eaton v. Supervisors*, 44 Wis. 489; *Wright v. Zettel*, 60 Wis. 168.

The statutory authority of the county or other municipal corporation to purchase at tax sale must be strictly pursued. It cannot purchase jointly with an individual. A deed showing a sale to the county and an individual is void on its face. *Sprague v. Coenen*, 30 Wis. 209; *Hunt v. Stenson*, 101 Wis. 556.

The statute clearly gives the county treasurer authority to purchase for the use of the county. *Jenks v. Racine*, 50 Wis. 318.

Cities bidding in at tax sales. SECTION 1138a. 1. If, at any sale in any city in this state, whether organized under general law or special charter, of real or personal property for taxes or assessments, no bid shall be made for any parcel of land, or for any goods and chattels, the same shall be struck off to the city, and thereupon the city shall receive in its corporate name a certificate of the sale thereof, and shall be vested with the same rights as other purchasers are. If the city shall be purchaser of any personal property by virtue of this chapter, the treasurer shall have the power to sell the same at public sale, and in case the city shall become the purchaser of any real estate at any tax sale, the treasurer is authorized to sell the certificates issued therefor for the amount of such sale and interest at ten per centum per annum, and to indorse and transfer such certificates to the purchasers.

2. All acts or parts of acts, including the provisions of any city charter, which are contrary to the provisions of this section are repealed.

County may purchase on tax sales. SECTION 1138m. The county board of any county may authorize and direct the county treasurer to bid in and become the purchaser of any or all such lands as are sold for general taxes only for the amount of such general taxes, interest and charges remaining unpaid thereon, excepting such lands against which there are outstanding certificates of sale. All laws relating to the sale or purchase of lands sold for the nonpayment of such taxes, and to the redemption of such lands, shall apply and be deemed to relate to the sale or purchase of such lands by the county.

Created by Chapter 268, laws of 1917.

Mistake not to affect sale. SECTION 1139. When any land is offered for sale for any taxes it shall not be necessary to sell the same as the property of any particular person; and if it should be sold as the property of any such person no misnomer of the owner or supposed owner or other mistake respecting the ownership of such land shall ever affect the sale or render it void or voidable.

Certificate of sale; may be assigned and recorded. SECTION 1140. The county treasurer shall give to each purchaser on the payment of his bid, and if the same be struck off to the county, then to the county, a certificate dated the day of the sale, describing the lands purchased, the amount paid therefor, the rate of interest thereon and the time when the purchaser will be entitled to a deed; which certificate shall be substantially in the following form, to wit:

STATE OF WISCONSIN, }
.... County, } ss.

County Treasurer's Office, ..., A. D. 19..

I, ..., county treasurer of the county of ...., in said state, do hereby certify that I did at public auction, pursuant to notice given as by law required, on this .... day of ...., sell to A. B. (or the county of ....) the lands herein described for the sum of .... dollars and .... cents, said sum being the amount due and unpaid for taxes, interest and charges on said land for the year of our Lord one thousand nine hundred and ....; that said A. B., his heirs or assigns (or said county or assigns), will, therefore, be entitled to a deed of conveyance of said lands in three years from this date, unless sooner redeemed from such sale according to law, and the rate of interest in case of redemption shall be .... per cent per annum. Said lands are described as follows, with sums for which each tract was sold set opposite to each description, that is to say: (Here insert description, and separately the amount bid on each tract.) A. B., County Treasurer.

Any such certificate may be assigned by the purchaser by writing his name in blank on the back thereof, and by the county treasurer or county clerk in like manner, with his official character added, or any person's interest therein may be transferred by a written assignment indorsed upon or attached to the same. Any assignment of such certificate after the first may be made by the delivery of the certificate without any writing or other indorsement. A deed may be issued on such assigned certificate, though indorsed or delivered to the owner and holder thereof, and possession of the same, together with the affidavit now required by law, shall be sufficient evidence of the ownership of such certificate. And the county treasurer or county clerk, whichever of them shall, by the county board in pursuance of section 1193, be authorized to sell and assign any tax certificates owned by such county, shall make and keep on file in his office a careful and accurate list of all such tax certificates struck off to or owned by such county, and he shall note upon such list, at the time of the sale or assignment of any such certificate, the time when and the person to whom the same is assigned. All such certificates and assignments thereof, when such assignments are duly sealed, duly attested by two subscribing witnesses and acknowledged, may be recorded in the office of the register of deeds of the proper county with the same effect as other records therein.

Under the present statute, tax certificates can only be assigned by the purchaser by endorsement in writing. Certificates purchased by the county may be assigned by the treasurer or county clerk with his official signature added but assignments after the first may be made by delivery without assignment.

Court decisions. The statutory methods under the tax laws for taking property from the owner for nonpayment of tax thereon must be strictly pursued; yet tax deeds are to be construed by the same

rules as other deeds, reasonable presumptions are to be indulged in, immaterial blunders and omissions ignored, and of two constructions, the one that will support the deed is to be preferred to one that will defeat it. *Hunt v. Stenson*, 101 Wis. 556.

A tax deed will be void as to the original owner if it be issued to one to whom the certificate was never assigned. *Dreutzer v. Smith*, 56 Wis. 292.

The holder of a void certificate cannot recover of the county the amount paid therefor when lands have been sold to the county without issuing an assignment as provided in this section. *Gruger v. Supervisors*, 44 Wis. 605.

Inclusion in the certificate of the certificate fee of twenty-five cents is an immaterial irregularity and not grounds for setting aside the certificate. *Chippewa Land Co. v. J. L. Gates Co.*, 118 Wis. 345.

A certificate issued to an individual and the county jointly is void. *Sprague v. Coenen*, 30 Wis. 209.

But where the recital can be construed as a separate sale of different parcels, some to an individual and some to the county, the deed is valid. *Hunt v. Stenson*, 101 Wis. 556.

Papers, stub book and rolls to be filed. SECTION 1141. Every county treasurer shall, immediately after the close of the sale of any lands for taxes, deposit in the office of the county clerk all affidavits, notices and papers in relation to such tax sale to be filed and preserved therein; also a statement containing a particular description of each tract or parcel thereof, of land so sold by him, specifying the name of the person to whom sold, the amount for which the same was sold and the name of the owner, if known; and the said treasurer and clerk shall each record such statement in their respective offices. Said treasurer shall also file with the county clerk the stub book, tax roll and delinquent return, and said clerk shall preserve and file the same in his office.

The object of sections 1130, 1132, and 1141 is to preserve the evidence of posting notices of sale for the protection of interested parties. *Myrick v. Kahle*, 120 Wis. 57.

This section is directory and not mandatory, where it appeared that the treasurer did not make or file the statements required, but the list of the land sold was kept in the county clerk's office in a book called the sales book but not signed by the treasurer, the deed was not thereby invalidated. The case of *Pier v. Oneida Co.*, 93 Wis. 463, was based on other irregularities sufficient to invalidate thedeed and must be limited to them. *Allen v. Allen*, 114 Wis. 615.

Record of affidavits and notices; as evidence. SECTION 1141a. Every county clerk in this state shall, at the expense of the county, procure a record book and record therein all affidavits and notices hereafter filed in his office by or on behalf of the county treasurer, pursuant to the provisions of section 1141 of the statutes and the record of such affidavits and notices shall be received in evidence in all courts and proceedings as proof of the matters therein contained with like effect as such original notices or affidavits.

Sale after injunction dissolved. SECTION 1142. Whenever any officer shall have been enjoined from selling any lands subject to sale

for unpaid taxes or assessments of any kind or nature and such injunction shall have been dissolved, if such taxes or assessments, with interest and charges thereon, shall remain unpaid for thirty days after the dissolution of such injunction such officer or his successor shall, immediately after the expiration of said thirty days, give notice of the time and place of the sale of such lands, and thereupon sell the same for such unpaid taxes or assessments, interest and charges; and interest shall be charged thereon to the time of sale at the rate provided by law for interest on such taxes and assessments at the time of granting such injunction; and in giving such notices and in making such sale he shall be governed in all respects by the provisions of law which may then be in force concerning sales of lands for taxes so far as the same may be applicable. The effect of such sale shall be the same as of other sales of lands for taxes by such officer; and the land sold may be redeemed from such sale, and if not redeemed, deeded in like manner and with like effect as may be provided in other cases of lands sold for taxes.

An injunction against a tax sale dismissed for want of prosecution (no fault of the plaintiff being shown) is not a bar to a suit to set aside the tax certificates, after reassessment, by the same plaintiff. *Spear v. Door Co.*, 65 Wis. 298. See *Howes v. Racine*, 21 id. 514. 91 Wis. 661.

Disqualification of officers. SECTION 1143. It shall not be lawful for any county treasurer, county clerk, any of their deputies or clerks or any other person for them or any of them to purchase, directly or indirectly, property sold for taxes at any tax sale, or to purchase any tax certificate or tax title held by the county or by any person or persons whomsoever, except for and on behalf of the county as provided by law; nor shall any such treasurer, clerk, any of their deputies or clerks or any other person for them or either of them be directly or indirectly interested in the purchase of any property sold as aforesaid at any tax sale or in the purchase of any tax certificate or tax title except as hereinbefore provided; and any such certificate or title purchased or issued or any purchase of property made contrary to this section shall be null and void; and no money received into the county treasury for any such tax certificate shall be refunded to the purchaser or to any person on his behalf.

Such an officer, cannot while in office, purchase, directly or indirectly, any such deed or certificate issued by his county. He is not, however, prohibited from purchasing any issued by any other county. Where an act creating a new county provides that tax certificates held by the old county on lands situated in the new should be assigned to the latter by the county treasurer of the former such treasurer may, after such assignment, purchase such certificates. *Gilbert v. Dutrail*, 91 Wis. 661.

A deed from a county based on county tax titles was held valid on findings and evidence showing that the deputy county treasurer was not interested in the purchase from the county. *Maren v. Simonson*, 130 Wis. 650, 110 N. Y. 803.

CHAPTER XI

MISCELLANEOUS PROVISIONS; DELINQUENT TAXES ON PUBLIC LANDS; TAX LIENS; REFUND OF ILLEGAL TAXES

(Chap. 49 of the statutes, secs. 1144–1164g, inclusive.)

Lands acquired by state are not subject to tax sale. SECTION 1149*a*. (a) It shall not be lawful for any county, city or village treasurer to sell any lands which shall have been acquired by the state after the taxes become a lien thereon. When such lands shall have been returned delinquent to the county treasurer he shall certify to the commissioners of public lands a description thereof together with the amount of taxes charged against each separate description. The commissioners of public lands within ten days after the receipt of such certificate from the county treasurer shall consider the question of whether such taxes are just and legal, and if they so find shall order the same paid. They shall transmit a certified copy of their order to the secretary of state, and upon his audit and warrant drawn upon the state treasurer the amount of said taxes shall be paid out of the appropriation provided for carrying out the purposes of this section.

(b) No tax deed shall be issued upon any land the title of which shall have been acquired by the state after the same shall have been sold for taxes and a tax certificate issued thereon. Upon the purchase by the state of any lands upon which there are tax certificates outstanding, the state department or agency making such purchase shall cause the amount of money required for the redemption thereof to be paid to the county treasurer. If such tax certificates shall not be so redeemed, the owner thereof may deposit the same with the county clerk who shall draw an order upon the county treasurer for an amount necessary to redeem the same and payable to the holder of the tax certificate. The amount of such order shall be paid by the county treasurer and deducted by him in his next settlement with the state treasurer for state taxes.

(c) Whenever, in any action brought by the state to set aside tax deeds outstanding on lands owned by the state, the court shall, as a condition of relief, order a certain amount to be paid by the state, the commissioners of public lands may order that the amount required by the order of the court as a condition of relief shall be paid from the state treasury. A certified copy of their order shall be filed with

the secretary of state, and upon his audit thereof and his order drawn on the state treasurer the amount shall be paid to the clerk of the proper court or such other person as directed by the order of the court.

(d) The commissioners of public lands are authorized and empowered to negotiate with such parties as may hold tax deeds or tax certificates upon any of the public domain, and if the holder of such tax deed or deeds or tax certificate or certificates is willing to accept the amount of the taxes and interest thereon at the rate prescribed by section 1165, or if lands are in counties where the rate has been changed at the rate fixed by the county board, and the legal charges paid out by him for the purpose of securing said tax deed or tax certificate, the commissioners of public lands may, by their order, direct that he be paid such sums for a quitclaim deed of such lands or for the surrender of such certificate or certificates. A certified copy of such order may be filed with the secretary of state, and upon his audit thereof and an order drawn on the state treasurer, the same shall be paid to the person or persons indicated in the order of the commissioners of public lands.

Taxes in cities and villages, how collected. SECTION 1150. The warrant for the collection of state and county taxes in any city or village which by its charter collects taxes independently shall, unless otherwise provided, be made out and signed by the clerk of such city or village, and annexed by him to the assessment or tax roll of such city or village, and delivered to the treasurer thereof for collection, who shall proceed in the collection of taxes therein specified in like manner as he is required by the charter of such city or village to collect city or village taxes; and he shall make returns thereof under oath, with the said assessment or tax roll of such city or village annexed, to the county treasurer, and pay over all state and county taxes collected by him at the time and in the manner, as near as practicable, that town treasurers are required to make their returns of uncollected taxes and pay over the state and county taxes collected by them; but the affidavit to be attached to his return shall conform to the duties required to be performed by him in the collection of taxes; and taxes for city, village or other local purposes may be collected together with the state and county taxes, when so ordered by the common council of such city or the board of trustees of such village or when so directed to be by law, and if so collected they shall be set down in one or more separate columns; but in all cases the tax for the support of the common schools in such city or village, imposed by the county board of supervisors, shall be levied and collected at the same time with the state and county taxes and retained by the treasurer of such city or village and paid over by him as required by law; and the warrant issued to such treasurer shall be so modified as to conform to the provisions of this chapter; and every city and village treasurer acting as collector of taxes under the provi-

sions of this chapter shall, so far as practicable, unless otherwise provided, exercise the same powers and perform the same duties as are herein conferred upon and required of town treasurers and be subject to the same penalties and liabilities as such town treasurers.

Application of chapter to cities, etc. SECTION 1151. The provisions of this chapter relative to towns and town treasurers shall apply to cities and villages and the treasurers thereof, when the same are applicable, unless otherwise provided; but whenever a village constitutes a part of a town it shall, for the purpose of raising state, county and town taxes, be regarded as a part of the town. When any territory shall be detached from any county, town, city, village or school district it shall in no manner invalidate or interfere with the collection of taxes in such territory, but they shall be collected and returns made as if the territory was not detached therefrom.

Neglect to elect officers; how taxes collected. SECTION 1152. Whenever the people of any territory which has been or shall hereafter be set off as a separate town shall neglect or refuse to elect the officers required by law to be chosen therein, by reason whereof the property of such town shall fail to be assessed in the manner provided by law, the county board shall issue their warrant to the assessor and to the treasurer of a town next adjoining, requiring them to assess and collect respectively the amount of taxes due from such town to the state and county till an election shall be held therein; and thereupon such assessor and treasurer shall severally discharge all the duties in regard to the assessment and collection of said taxes within said town that would have devolved upon them had they been duly elected assessor and treasurer respectively for said town; and for any malfeasance in respect thereof said treasurer shall be liable on his official bond, or said board of supervisors may, if they think necessary, require him to execute a new bond to the county treasurer in such sum and with such surety as they shall direct.

This section is valid and does not violate either the uniform rule of taxation nor the uniformity of town and county government prescribed by the state constitution, nor does it deprive land owners of their property without due process of law under the 14th amendment of the United States Constitution. *Strange v. Oconto Land Co.* 136 Wis. 516.

Mailing statements of taxes due. SECTION 1152a. The treasurer of any town, village or city, except cities of the first class, while the tax roll therefor is in his possession, shall, upon request therefor from any taxpayer, forthwith deliver or forward by mail to such taxpayer a statement of the amount of taxes due upon each parcel or tract of land owned by such taxpayer and situated in such town, city or village, and in case the tax roll has been delivered to the county treasurer of any county, except those containing a population of one hundred fifty thousand inhabitants or more, then and in such

case the county treasurer shall, upon request therefor, forthwith perform such service.

From frequent complaints addressed to the tax commission it seems that many local treasurers fail to comply with the requirements of this section. Property owners are entitled to know the amount of taxes charged against them on their property in time to provide for payment of the same and it is the plain duty of local treasurers to furnish such information when requested. A strict compliance with section 1089 would seem to require them to furnish this information whether requested or not. That section provides that the treasurer "shall call at least once on the person taxed or at the place of his usual residence if within the town, city or village and demand payment of the taxes charged to him on such roll." While the treasurer is not required to call on non-resident taxpayers, this section plainly requires him to furnish them a statement of their taxes.

Taxes; payment by grantor and grantee. SECTION 1153. As between grantor and grantee of any land, when there is no express agreement as to which shall pay the taxes assessed thereon for the year in which the conveyance is made, if such land is conveyed on or before the first day of December, then the grantee shall pay the same; but if conveyed after that date, then the grantor shall pay them.

This section goes upon the theory that the taxes are not a specific lien upon real estate until the tax roll is completed and the taxes extended thereon. A grantor is not liable upon a covenant against taxes unless they have been extended upon the roll at the date of the conveyance. *Spear v. Door Co.*, 65 Wis. 298.

Where possession is surrendered by the vendor to the vendee, and the former covenants to give a warranty deed free of all incumbrances when the purchase money is paid or secured, the vendee is liable for the taxes assessed upon the land after taking possession thereof under the contract. *Williamson v. Neeves*, 94 Wis. 656, 665.

Rights of occupant who has paid taxes. SECTION 1154. When a tax of any kind on any real estate shall have been paid by or collected of an occupant or tenant such occupant or tenant shall be entitled to recover from the person under whom he is such occupant or tenant the amount so paid by him, with interest thereon at the rate of twelve per cent per annum, or he may retain the same from any rent due or owing from him to such person for the real estate on which such tax was paid, unless it be otherwise provided by agreement between such parties.

For corresponding provisions relating to the reimbursement of persons in charge or possession of personal property and assessed for the same, see sections 1044 to 1044c.

County to refund unjust tax. SECTION 1155. If any person, within two years after the payment of any state or county tax by him, can satisfactorily show to the county board that the same was improperly assessed or was paid by mistake when it was not justly chargeable, the said board shall order the same to be repaid by the county treas-

urer; and if the taxes so refunded or any portion thereof be properly chargeable to any town, city or village it shall be so charged.

Refunds on delinquent taxes made by the county board were properly credited to the county in an action for an accounting between the town and the county. The action of the county board in compromising or canceling unpaid delinquent taxes, or ordering that outstanding certificates be transferred at less than their face value, is without authority under this section or section 1184, where these compromises were not made as authorized by section 1210g. *Spooner v. Washburn Co.* 124 Wis. 24.

Cancellation of sales. SECTION 1156. If the county treasurer shall sell any parcel of land for taxes which shall have been paid before sale the county clerk, on presentation to him of a receipt of the town or county treasurer showing that such taxes have been so paid, shall enter in his sales book, opposite the description of the property so sold, the fact that such receipt had been presented, the date of presentation and by whom the receipt was executed.

Loss by officers. SECTION 1157. All losses that may be sustained by the default of any officer of any town, city or village in the discharge of the duties imposed by this title shall be chargeable to such town, city or village; and all losses sustained by the default of any county officer in the discharge of such duties shall be chargeable to such county; and the county board shall add all such losses to the next year's taxes of such town, city or village, or county, as the case may require.

County taxes collected by a town treasurer do not belong to the town of which he is an officer, nor is he an agent of the town for their collection, but an agent of the county. Hence, where taxes were collected upon lands and the town treasurer returned them as delinquent, the lands sold, the certificates of sale declared void by the county board and the money paid for them returned, the amount refunded being charged back to the town, added to its county taxes for the next year and collected and paid to the county treasurer, the town could not recover the amount, though it was wrongfully collected: *Westboro v. Taylor Co.* 90 Wis. 355.

Rights of lienholder who pays taxes. SECTION 1158. Whenever any person having any lien upon any real estate, obtained pursuant to law, shall have paid any taxes on such real estate or shall have redeemed such real estate, when the same shall have been sold for taxes, he shall have a further lien upon such real estate as against the person under whose title he claims such first lien and all other persons then claiming under him for the amount of money so paid, with interest at the rate of ten per cent per annum, and against all other persons claiming title to such real estate under such person accruing subsequently to the time of recording the notice hereinafter specified.

The purchase of land at a tax sale by a mortgagee for himself and taking tax certificates thereon must be regarded as for the protection

of the estate and the mutual benefit of mortgagee and mortgagor; especially in view of sections 1158 to 1160, providing that a mortgagee can pay taxes and reimburse himself therefor. Where land was bid off by the mortgagee and certificates issued to him, and he afterwards assigned them to a third person, who took a tax deed, and then conveyed the land to the mortgagee's son, held, that this operated as a payment of the taxes, and that the mortgagee had no lien upon the land against the owner thereof. *Burchard v. Roberts*, 70 Wis. 111.

Purchase of tax certificate amounts to a payment of the taxes for the protection of the estate, and the purchaser simply acquires the "further lien" upon the land as against a mortgagor and all persons claiming under him. *Hill v. Buffingham*, 106 Wis. 525.

Record of notice of lien. SECTION 1159. Any person paying money as aforesaid may cause to be recorded in the office of the register of deeds of the county where the real estate is situated a notice, signed and acknowledged by him, stating the land upon which the tax or redemption money was paid and the amount of the moneys thus paid.

Discharge of lien; rights of lienor. SECTION 1160. The original lien, by virtue of which any person shall obtain such second lien, shall not be discharged as to the persons mentioned in section 1158 until the money thus paid for taxes, charges, interest or redemption, with interest thereon as aforesaid, shall be first repaid. If the original lien be a mechanic's lien, or by attachment or mortgage, the amount of such second lien may be included in any judgment rendered in the suit by which such original lien shall be enforced; if it be by judgment, then upon the sale of such real estate the amount of such subsequent lien shall be paid before any surplus shall be paid to the owner of such real estate or to any such subsequent incumbrancer or claimant; and if it be by a sheriff's certificate of a sale on execution or by purchase at a mortgage foreclosure sale, then such real estate shall not be redeemed or repurchased from such sale or purchase until such second lien has been paid.

Lienholder may avoid tax. SECTION 1161. Any person who is the holder of any such original lien upon any real estate shall have the same right of action that the owner of the land has to test the legality and validity of any tax, charge or assessment or tax sale, and to annul the same, and to enjoin the sale or deeding of the land on account thereof.

Under this statute the mortgagee may sue to set aside a tax deed taken by the grantee of the mortgagor whether the conveyance to such grantee be recorded or not. *Avery v. Judd*, 21 Wis. 262.

Assessments may be settled for; effect of release. SECTION 1162. Whenever any assessment has been or shall be made by the authorities of any city or village for the purpose of paying for any work done or improvement made upon any street or highway therein, the costs of which are liable to be or have been assessed against any lot or

parcel of land, the owner or any person interested in any such lot or parcel of land may settle for such work or improvement with any contractor or his assigns having a claim against the same for any work done or to be done by him upon such street or highway under any contract with the authorities of such city or village; and a release, duly executed and acknowledged by such contractor or his assigns, shall be entitled to be recorded in the office of the register of deeds in the county and shall be an effectual release and discharge of all claims of such contractor or his assigns against the land described therein and against the owner thereof and the city or village which may be the contracting party for such work or improvement, but not of any claim of the city or village against such land for printing, surveying, engineering and other incidental expenses.

Neglect to levy taxes. SECTION 1163. Whenever any town shall have failed to levy, collect or pay over to the county treasurer any state or county tax apportioned to and charged against such town in any year, or any part thereof, the county board of such county shall, in the next or any succeeding year, charge all such delinquent taxes and a penalty of twenty-five per cent to such delinquent town; and the county clerk shall add the same to the amount of the annual state and county tax apportioned to such town for such succeeding year.

A town collecting and paying arrears of taxes in a village, with the penalty herein prescribed, cannot collect the penalty from the village, where it was wrongfully charged back to the town by the county board, and was paid without request by the village. *Milwaukee v. Whitefish Bay*, 106 Wis. 25.

Recovery of illegal taxes; limitation. SECTION 1164. 1. Any person aggrieved by the levy and collection of any unlawful tax assessed against him may file a claim therefor against the town, city, or village, whether incorporated under general law or special charter, which collected such tax in the manner prescribed by law for filing claims in other cases, and if it shall appear that the tax for which such claim was filed or any part thereof is unlawful and that all conditions prescribed by law for the recovery of illegal taxes have been complied with, the proper town board, village board, or common council of any city, whether incorporated under general law or special charter, may allow and the proper town, city, or village treasurer shall pay such person the amount of such claim found to be illegal and excessive. If any town, city, or village shall fail or refuse to allow such claim, the claimant may have and maintain an action against the same for the recovery of all money so unlawfully levied and collected of him. Every such claim shall be filed; and every action to recover any money so paid shall be brought within one year after such payment and not thereafter.

2. In case any such town, city, or village shall have paid such claim or any judgment recovered thereon after having paid over to the county treasurer the state and county tax levied and collected as part

of such unlawful tax, such town, city, or village shall be credited by the county treasurer, on the settlement with the proper treasurer for the taxes of the ensuing year, the whole amount of such state and county tax so paid into the county treasury with the county's and state's proportionate share of the taxable costs and expenses of suit; and the county treasurer shall also be allowed by the state treasurer the amount of state tax so illegally collected with the state's proportionate share of the taxable costs and expenses of suit and paid in his settlement with the state treasurer next after the payment of such claim or the collection of such judgment. If any part of such unlawful tax shall have been paid over to any school district before the payment of such claim or judgment, such town shall charge the same to such district with the proportionate share of the taxable costs and expenses of suit, and the town clerk shall add the same to the taxes of such school district in the next annual tax; provided, however, that no claim shall be allowed and no action shall be maintained under the provisions of this section unless it shall appear that the plaintiff has paid more than his equitable share of such taxes.

Court decisions. The word "tax" as used in sec. 1164, Stats., does not include or relate to special assessments, and no action can be maintained under such section to recover money paid for such assessment. *Marine Co. v. Milwaukee*, 151 Wis. 239, 244.

The remedies given by this section may be invoked in cases of illegal income taxes. *Montreal M. Co. v. The State* 155 Wis. 245.

An action to recover money had and received, though legal in form, is in its nature equitable, and can only be maintained where the defendant has received money which, in equity and good conscience, he ought to pay to the plaintiff. The mere fact that the tax proceedings may have been irregular, though the tax has been paid under protest, will not authorize a recovery if there is no defect or irregularity going to the validity of the assessment and affecting the groundwork of the tax. *Wiesmann v. Brighton*, 83 Wis. 550.

Proof of illegal and void additions to plaintiff's assessment may show a prima facie case, but defendant may show, as a vindication of the equitableness of the tax and as a justification for retaining the money sued for, that had plaintiff made a fair and truthful return of his property he would have been properly taxed for the entire sum or a material portion of the alleged illegal tax. *Day v. Pelican*, 94 Wis. 503, 509.

When payment voluntary; when not. An excessive tax exacted by misconduct and fraud of officers is recoverable. *Harrison v. Milwaukee*, 49 Wis. 247, such payment not voluntary. But if payment of an unjust tax is made voluntarily, in the absence of fraud in enforcing its payment, it cannot be recovered. Ibid.

Payment of a tax under protest where such payment is demanded as a condition of receiving other taxes upon plaintiff's property, default in which would result in the sale of his property for taxes, is not a voluntary payment and amounts to coercion. *Roehl v. Milwaukee*, 141 Wis. 341, 344.

A payment is not voluntary if the collector understands from the taxpayer that the taxes are regarded as illegal and that suit will be brought to recover them back. *Parcher v. Marathon Co.*, 52 Wis. 388.

For an action to recover taxes paid under a similar provision of the city charter of Milwaukee, see *Burnham v. City of Milwaukee*, 155 Wis. 90.

Reassessment of plaintiff's taxes. SECTION 1164a. 1. In any action for the recovery of any money paid as and for taxes levied either upon real or personal property, or both, if upon the trial it shall appear that the assessment upon which the taxes were so paid is void, the court, before entering judgment, shall continue the action for a sufficient time to permit a reassessment of the property affected by such void assessment, and such reassessment shall thereupon be made in accordance with the provisions of law. If from such reassessment when so made it shall appear that the sum or sums paid for taxes by the plaintiff are no greater than his equitable and just share of the taxes as so reassessed, judgment shall be entered for the defendant; and if from such reassessment it shall appear that the plaintiff has paid more than his equal and just share of the taxes judgment shall be entered in his favor for the excess only over such share. The validity of the reassessment herein provided for may be attacked and determined, and subsequent reassessments may be had as provided by section 1210*b;* provided, that such reassessment shall in all cases be made by the assessor of the assessment district wherein the property to be reassessed is situated.

2. If however, in any such action now pending or which may be begun hereafter the evidence enables the court to determine, with reasonable certainty, the amount of taxes which were justly chargeable against the lands involved in the action, the court, in its discretion, may proceed to judgment without staying proceedings or ordering a reassessment, if it finds that it is for the best interests of all parties to the action that it should do so.

Court decisions. Section 1164a, subdivision 2, added by Chapter 659, laws of 1917. See also Sections 1200b and 1210h.

If it appears that the assessment was void the court, before entering judgment, should continue the suit pending reassessment: *Johnston v. Oshkosh.* 65 Wis. 473.

A reassessment is unnecessary when the amount which plaintiff ought to pay can be determined from the assessment roll. In this case the board of review arbitrarily increased plaintiff's assessment: *Hixon v. Oneida Co.*, 91 Wis. 649.

Sec. 1210h—1 Stats., requiring a deposit to be made as a condition to maintaining an action to set aside a tax for any error or defect going to the validity of the assessment or groundwork of the tax, does not apply to cases where the tax officers had no power to impose the tax or because the land sought to be taxed lay outside the taxing district. *Wisconsin Real Estate Co. v. Milwaukee* 151 Wis. 198, 205.

THE ASSESSMENT AND COLLECTION OF SPECIAL TAXES.

For bridges, town houses, etc. SECTION 1164c. Whenever the qualified electors of any town, at any legal meeting, shall have voted to raise money, for the purpose of building or repairing any bridge or town house or other special purpose, to the amount of one thousand dollars or upwards more than six months previous to the time for the completion and delivery to the town treasurer for collection of the next regular annual tax roll of such town the supervisors of such town

may, in their discretion, require the clerk of such town to make out a tax roll by copying the last regular annual tax roll of said town, excepting the taxes specified therein, and upon the roll so made out to apportion and carry out the special tax so voted to be raised. The said clerk shall attach to said roll, when completed, a warrant in the usual form, excepting that such warrant shall require the treasurer to retain and pay out as town treasurer, according to law, the whole of the taxes collected by him by virtue thereof, and to make return of said warrant, with said roll annexed, to said town clerk with his doings thereon within sixty days.

Special bond. SECTION 1164d. The town treasurer shall execute a bond to the supervisors of the town in a sum double the amount of such tax, with sureties, to be approved by the chairman of said supervisors, conditioned that he will faithfully account for and pay over according to law all moneys that shall come into his hands as such treasurer under and by virtue of said warrant.

Duty of treasurer. SECTION 1164e. The clerk shall thereupon deliver said tax roll and warrant to the treasurer; and the said treasurer shall proceed to collect the same in the same manner that general taxes are collected.

Delinquent taxes, how collected. SECTION 1164f. If the treasurer shall be unable to collect any part of said taxes he shall return to the town clerk a list of such delinquent and uncollected taxes under oath in the usual form; and the said clerk shall add such delinquent taxes to the taxes against the same property and persons in the next regular annual tax roll of such town, and the same shall be collected in the same manner as other taxes in said annual tax roll.

Ratifying settlements by county boards. SECTION 1164g. All acts, resolutions and proceedings of county boards and county officers of this state heretofore passed, had or taken in compromising and settling delinquent taxes and liens of tax certificates upon real properties, such compromises and settlements being with the owner of such real property, are hereby ratified, confirmed and validated in the following cases:

(1) In all cases where such taxes had been returned to the county treasurer as delinquent (and the person or the owner of the lands or property so charged with such taxes claim such taxes to be illegal for any cause).

(2) In all cases where tax sale certificates or tax deeds were held by the county.

(3) In all cases where tax sale certificates were held by persons or corporations other than the county and the county was, at the time of settlement, lawfully liable to the holders of such certificates on account of the invalidity thereof.

Receipts and deeds cured. All tax receipts, redemption receipts, and deeds issued to carry out such settlements and compromises are also ratified, confirmed and validated; and the moneys received for such tax receipts, redemption receipts and deeds are hereby declared to have fully satisfied all of said taxes, tax liens and claims of said county against the properties described in such instruments.

This section was designed to ratify various compromises and adjustments of taxes between property owners and county boards (especially in Douglas county) made prior to its passage, and to confirm tax receipts and tax deeds issued pursuant thereto. As the original law was passed in 1903 and applies only to settlements made prior to that date, it is now probably obsolete.

CHAPTER XII

HIGHWAYS AND BRIDGES; LOCAL ROADS; STATE AND FEDERAL AID; TRUNK AND PROSPECTIVE HIGHWAY SYSTEMS

(Chap. 52 of the statutes, secs. 1223–1252, inclusive.)

The Wisconsin Highway System. The plan of highway improvement now in vogue consists of three different branches namely, the federal aid or trunk line system, the state aid or prospective highway system and the local highway system. Both the trunk line system and the prospective highway system are explained in the extract from the last report of the Highway Commission reproduced below, and do not require further elaboration here. The construction and maintenance of these roads are under the direction of state and county officers. Town, city and village officers have no jurisdiction over them except to keep them open for travel. On the other hand, the local system relates primarily to lateral highways not constituting parts of either the trunk line system or the prospective highway system. The sections of the statute quoted in this chapter pertain to this class of highways only.

The law relating to the improvement of local highways of this character was materially simplified and improved by chapters 443, 518 and 551 of the laws of 1919. The principal changes effected by the legislation of that year are (1) repeal of the poll tax; (2) abolition of the payment of highway taxes in labor; (3) discontinuance of the district highway superintendent and substitution of a town highway superintendent under direct supervision of the town board; (4) centralization of the levy and collection of highway taxes in the regular town officers; and (5) repeal of certain duplicate and conflicting provisions resulting from the adoption of two highway acts in 1911.

HIGHWAYS AND BRIDGES.

Supervisors' duties. SECTION 1223. The supervisors of the several towns shall have the care and supervision of all highways and bridges therein (except as is otherwise provided by law), including all state roads laid out and established before the tenth day of April, one thousand eight hundred and ninety-five, in so far as such roads were then opened and traveled, and as to such roads or any portion of them

situated in any town the supervisors thereof shall have and exercise the same care and supervision as is provided in this chapter as to other highways. It shall be the duty of each board of supervisors:

(1) To appoint some competent person to superintend, under their direction, the construction and repair of highways and bridges within the town and cause to be removed all obstructions therefrom.

(2) To provide machinery, implements, stone, gravel and other material on such terms as may seem proper, and hire such machinery, laborers and animals as may be required to make, build, pave and repair highways and bridges; and for these purposes they shall have the power to purchase gravel pits and stone quarries and take the title thereto in the name of the town; and if such pits and quarries cannot be purchased, title thereto may be acquired in the manner provided in section 1226b.

(3) To cause bridges which are or may be erected over streams intersecting highways to be kept in repair.

(4) To require the superintendent of highways from time to time, and as often as they shall deem necessary, to perform any of the duties required of him by law.

(5) To assess the highway taxes in their town in each year as provided by law.

(7) To cause all legal highways not fully and sufficiently described or recorded, and such of the roads used as highways as have been laid out but not so described or recorded, to be ascertained, described and entered of record in the town clerk's office.

(8) To lay out and establish upon actual survey, as hereinafter provided, such new roads in their town as they may deem necessary and proper; to discontinue such roads as shall appear to them to have become unnecessary; to widen or alter such roads when they shall deem necessary for the public convenience, and perform all other duties respecting highways and bridges directed by this chapter.

(10) It shall be the duty of each board of supervisors to establish rules and regulations prohibiting the placing, throwing, or depositing in, on, about, or along any public highway and to require the removal therefrom, of any bodies of dead animals, carrion, meat, fish, rubbish, ashes, paper, brick, tin cans, old iron, junk, boxes, barrels, machinery, and to establish rules and regulations to provide for the safety of travel along any public highway.

(11) Any town at its annual meeting may establish rules and regulations prohibiting the propelling, moving or otherwise using of any steam or traction engine or other traction vehicles upon or along any public highway at or in such seasons or times of the year when the propelling, moving or otherwise using of any such engine or other traction vehicles thereon will cause or result in damage to such highway.

Amended by chap. 518, 1919.

Independent of the highway law (sections 1317m—1 to 1317m—15, Stats. 1911) a town board had power under this section and section 1232 to expend money of the town upon its highways; and expenditure

pursuant to the act of 1911 was held not void but an irregular exercise of the power conferred by this section. *Town of Grand Chute v. Herrick*, 163 Wis. 648.

A town may change the natural flow of surface water by making the improvements on its highways so long as it confines its operations within their limits, though as a result the water diverted is made to flow upon adjoining lands. *Champion v. Crandon*, 84 Wis. 405.

Streets in a plat of an unincorporated village, recorded by order of the town board and declared town highways, but not opened or worked, become highways by estoppel as between the owner of the plat and his grantees of lots therein, and the latter may sue in equity to compel the removal of fences on such streets. *McFarland v. Lindekugel*, 107 Wis. 474.

Town board has no authority to purchase under this section unless the electors have made provisions to meet the expenditure. *Indiana Road Machine Co. v. Lake*, 149 Wis. 541.

This subdivision must be read in connection with other statutes so that the power to purchase may only be exercised when the electors have made provision for the expenditure. Ibid.

Town waterways; maintenance by towns. SECTION 1224a. The town board of any town in which is situated any waterway suitable for general and useful navigation by boats and launches may, by order to be recorded by the town clerk, adopt the same as a public waterway of the town and may thereupon expend highway funds in the improvement and maintenance of the navigability thereof. But no amount in excess of two hundred dollars shall be expended on any such waterway in any year except in pursuance of a special appropriation therefor, voted at the annual town meeting. No town shall become liable in damages by reason of any defect or insufficiency of such a water highway.

Supervisors' statement. SECTION 1226. The supervisors of each town shall render to the board of audit authorized by law to settle their accounts at each annual meeting of such board a statement in writing containing:

(1) The amount of highway taxes assessed and the amount which has been collected in their town.

(3) The manner in which any moneys raised by the town for the improvement or building of roads or bridges therein have been disbursed and the particular items of such disbursements; and

(4) An estimate of the sum necessary to be raised by the town for the improvement of roads and bridges therein for the ensuing year, specifying the improvements required; and such board of audit shall cause such statement to be presented at the next annual town meeting.

Amended by chap. 518, 1919

Borrowing money. SECTION 1226c. The supervisors of any town may, at any time after the assessment of the highway taxes in any year and before their collection, pledge the credit of the town for a loan or loans of any sum of money not exceeding in all the total amount of such taxes as shall have been assessed; the money so bor-

rowed shall be expended under the direction of the supervisors in paying the expense of constructing and repairing highways and bridges in said town for the current year. The tax so assessed, when collected, shall, so far as may be necessary, be applied to the payment of the loan or loans and interest thereon and the remainder to the purpose for which it was assessed.

Amended by chap. 518, 1919.

Superintendent of highways; appointment of. SECTION 1229. 1. The town supervisors shall appoint and fix the compensation of a competent person to superintend the construction and repair of all highways and bridges in the town, under their general supervision and direction. Such person shall be designated as superintendent of highways of the town. Such superintendent shall be appointed in writing for a term of one year from the date of appointment, and such writing shall be filed with the town clerk. Any superintendent may be removed for cause by the supervisors. Any vacancy occurring by removal or otherwise shall be filled by them for the unexpired term.

2. The superintendent of highways may be paid in lieu of all other compensation an annual salary, payable monthly, either out of the bridge and road fund or out of the general fund of the town. In addition to his salary, the superintendent of highways may be paid an amount per month for the maintenance and up-keep of a horse and vehicle or automobile or motor truck, such payment to be made in addition to the payment for salary and such allowance to be paid monthly out of the road and bridge fund or out of the general fund of the town. Such allowance for the use of a horse and vehicle or automobile or motor truck shall be fixed by the town board at any regular or special meeting and may be discontinued by them. The right to receive payment for the up-keep of a horse and vehicle or automobile or motor truck shall not be incidental to or inseparable from the office of superintendent of highways but may be allowed or discontinued by the supervisors at their discretion at any meeting of said supervisors.

3. Each superintendent of highways shall, before he enters upon the duties of his office, execute to the town a bond in such amount as shall be required by the town board of supervisors and with such sureties as shall be approved by said board, and file the same with the town clerk, conditioned upon the faithful discharge of the duties of his office and upon the proper application and payment of all moneys that may come into his hands.

4. Each superintendent of highways shall make a complete and full report of all funds received and disbursed by him whenever requested so to do by the town board, and shall also make a complete and full report to each annual town meeting. Created by chap. 518, 1919.

If the electors have voted under section 776 to collect the highway taxes in money the duty of the supervisors as to making out warrants for the collection of such taxes is clearly abrogated. If any duty remains upon them as a board in fixing the amount of the taxes to be

raised for that purpose it is simply their duty, in the absence of any vote of the electors on the subject, to declare the number of mills which shall be assessed, and then the amount is to be carried out by the clerk upon the general assessment roll and collected with the other taxes. *Sage v. Fifield*, 68 Wis. 546.

Supt. of highways; duties of. SECTION 1230. 1. It shall be the duty of the town superintendent of highways

(a) To supervise the construction and maintenance of all roads, bridges, and culverts together with their appertaining structures on all highways, required by law to be maintained by the town.

(b) To keep the said highways passable at all seasons.

(c) To perform such other duties in connection with highways as the town supervisors may designate him to perform.

(d) To keep a full account of all receipts and disbursements.

2. The town superintendent may make such arrangements for the prosecution of his work as he may deem necessary and may appoint such foremen under him as the necessities of his various work may require.

3. The town supervisors shall provide the town superintendent of highways at the time he enters upon his duties with the necessary forms and books so that he may properly record all receipts and disbursements therein. The state highway commission is directed to devise a standard set of forms and books for the use of town superintendents and to furnish each town board with a description thereof on or before April 1, 1920.

4. All payments for work performed and for materials furnished on town highways shall be made by town highway order drawn upon the town treasurer, and each order shall be signed by the town superintendent of highways and countersigned by the town chairman and each order shall be recorded upon the books of the town superintendent showing the date, amount and purpose thereof.

5. All formal contracts for the performance of road, bridge and culvert construction shall be approved by the majority of the town board before being binding upon the town. Created by chap. 518, 1919.

When an overseer has actual notice of a defect in a highway it is his duty to see that it is remedied; and nothing short of this will relieve the town from liability for injuries which may result. *Parish v. Eden*, 62 Wis. 272.

Superintendent has no right to enter upon improved land outside the limits of the highway to obtain material with which to make or improve it, though it cannot be otherwise done without great expense and trouble. *Jackson v. Rankin*, 67 Wis. 285.

A town is not liable to an overseer for work done in fixing a road, though the chairman of the town board directed him to do it. The town is not bound as on a contract unless the supervisors act as a board. *Deichsel v. Maine*, 81 Wis. 553.

Assessment of highway taxes. SECTION 1239. The supervisors of each town shall meet within eighteen days after the annual town meeting, and shall then, or at some subsequent meeting on or before

the second Monday of May, assess the highway tax in their respective towns for the ensuing year.

Amended by Chaps. 443 and 518, 1919, abolishing the poll tax by striking out that portion of the section providing for making the list for the assessment thereof, and renumbering subdivisions two and three to read subdivisions number one and two.

A special law attempting to take from the control of the town officers in one county a portion of the moneys raised in their towns for highway purposes and to intrust its expenditure to the county board violates the constitutional rule as to the uniformity of town and county government. *McRae v. Hogan*, 39 Wis. 529.

Independent of the highway law (sections 1317m—1 to 1317m—15, Stats. 1911) a town board had power under this section and under section 1223 to expend money of the town upon its highways; and expenditure pursuant to the act of 1911 was held, not void but an irregular exercise of the power conferred by this section. *Town of Grand Chute v. Herrick*, 163 Wis. 648.

Town board to assess highway taxes. SECTION 1240. In making an assessment of highway taxes the supervisors shall proceed as follows:

(1) The highway taxes, to an amount of not less than one nor more than seven mills on the dollar, shall be assessed on the valuation of the real and personal property in each town; provided, that in addition to such amount there may be assessed any additional amount which shall have been authorized by the last preceding annual town meeting, not exceeding in all ten mills on the dollar of such valuation; provided further, that no town containing less than five hundred inhabitants shall levy or collect in any year a highway tax of more than two thousand dollars, including the amount voted by any town meeting and the amount levied by the supervisors, not including the amount voted and levied under sections 1317m—1 to 1317m—15, inclusive, of the statutes; and that no town containing two congressional townships or more and more than five hundred inhabitants shall levy or collect a highway tax, exclusive of that first authorized herein, not including any amount raised under the provisions of sections 1317m—1 to 1317m—15, inclusive, of the statutes, of more than three thousand dollars in any year.

(2) The supervisors of every town shall levy such taxes for the current year and certify the amount thereof to the town clerk who shall apportion and enter them in the next tax roll for collection as directed by section 1252 [1911]. Provided, that in towns having income taxes in its treasury, the supervisors may expend the same for highway purposes, regardless of the foregoing limitation.

Amended by Chaps. 443 and 518, 1919.

Town highway tax; additional levy. SECTION 1244. 1. Whenever the amount of highway tax assessed by the supervisors shall be deemed insufficient to keep the highways in repair it shall be lawful for them, upon the written application of the superintendent of highways to assess an additional tax upon the taxable property of the

town, not to exceed seven mills to the dollar on the valuation of the same as fixed in the highway tax list; and the taxes so further assessed shall be collected and expended in like manner as other highway taxes assessed by the supervisors are required to be collected and expended.

Amended by chapter 518, laws of 1919, by striking out the provision requiring the application of the superintendent or superintendents of highways as a condition for assessing an additional tax.

The amount of highway taxes which town boards are authorized to levy under this section is subject to the limitations prescribed by secs. 776 and 1240. See note to sec. 776, pages 14, 15.

Town treasurer's duty. SECTION 1245. It shall be the duty of each town treasurer to credit any moneys in the town treasury accruing from returned highway taxes or from any balance remaining from such taxes collected in the previous year and notify, between the fifteenth and thirtieth days of April in each year, the chairman of the town board as to the amount of moneys in the treasury available for highway purposes.

How and when expended. SECTION 1246 [1911]. In all towns the moneys received from highway taxes shall be expended as and when the supervisors shall direct.

Removal of snow; credit for excess labor. SECTION 1249 [1911]. Every superintendent of highways shall, whenever any part of any public highway in his district is blocked by snow so as to be impassable, call out, upon one day's notice, so many of the taxpayers therein as may be necessary to immediately put such part of said highway in passable order; and every person who shall appear upon such notice, with such animals and tools as the superintendent shall direct and work agreeably to his orders, and shall expend in labor, material or money an amount greater than he is assessed to pay as highway taxes in such year, shall be entitled to receive from the superintendent a certificate for the amount of such expenditure, such certificate, on presentation to the treasurer of the town in which such expenditure was made, shall be a good credit on account of any delinquent or subsequent highway tax assessed against such person therein.

It is the duty of each overseer, whenever any portion of the highways in his district is rendered impassable by snowdrifts, to obey the requirements of this section. After a heavy fall of snow, accompanied by a high wind, the overseer is chargeable with notice of the probable effects of the storm and he is bound to ascertain where the highways are obstructed. Ordinary care in removing the drifts will relieve the town from liability. *McCabe v. Hammond*, 34 Wis. 590.

Assessment for removal of snow. SECTION 1250. [1911] For the purpose of performing the duty required by section 1249 [1911] the supervisors of the town may, if necessary, levy and assess a highway tax, not exceeding one-fourth the amount assessed by the

supervisors, on the taxable property on the highway tax list for the current year; and such tax shall be collected in the same way and manner as other highway taxes are collected.

Amended by chap. 518, 1919.

Collection and disbursement of taxes. SECTION 1252 [1911]. All taxes assessed for highway purposes by town supervisors shall be paid in money to the town treasurer at the time and in the manner other taxes are paid; the moneys received from such taxes shall be disbursed by said treasurer on warrants drawn by direction of the supervisors. The poll taxes shall be collected by the town treasurer in the manner provided in section 911 of the statutes.

Last sentence probably repealed by chap. 443, laws 1919.

A sale made without previous demand of payment of the tax is void. But where the plaintiff's property, then in possession of his bailee, was sold by the overseer and purchased by the bailee for himself with his own money the plaintiff cannot recover of the overseer for a conversion of the property since it has been restored to him, nor for the amount paid since he did not pay it nor authorize his bailee to do so; nor can he recover even nominal damages. *Enos v. Cole*, 53 Wis. 235.

ABSTRACT OF PRESENT HIGHWAY LAWS OF WISCONSIN

From 1918 Report of Highway Commission

Wisconsin is engaged in systematic highway construction under two distinct plans. The first is the Federal Aid plan, under which the cost of construction is borne jointly by the Federal government, the state and counties. The second is the State Aid plan, by which the cost is borne jointly by the state, the counties, and the towns, villages and cities in which the various improvements lie. The two plans, while differing in details, are similar and the improvements made, though distinct, are coordinated. The following is a brief explanation of the methods by which they are administered and financed.

FEDERAL AID PLAN—As a result of the Federal Aid Law, enacted by congress in July, 1916, each state receives a portion of a $75,000,000 appropriation, the amount depending on the ratio of its area, population and mileage of rural post roads to the total for the United States. The total amount to be received by Wisconsin under this distribution is approximately $1,925,000, to be expended over a period of five years. The state is required to appropriate at least an equal amount to be eligible to receive Federal Aid. The work is executed by the state, and must meet the approval of the United States Office of Public Roads.

The state legislature, in the statute assenting to the federal law and providing the machinery for administration (Chap. 175, Laws of 1917), made the required state appropriation from funds derived from the proceeds of motor vehicle license fees. The joint state and federal funds are distributed among the counties one-third each in the ratio of area, valuation and total public road mileage. In order to receive the amounts distributed from the joint federal and state funds, the counties are required to provide additional amounts at least equal to half the joint state and federal funds. The result is that the cost of federal aid construction is borne one-third by each of the units concerned.

All improvements with federal aid must be located at points designated by the State Highway Commission on the State Trunk High-

way System of 5,000 miles, which interconnects all county seats and cities with a population of 5,000 or more. On receipt of notice from the State Highway Commission of the amount required for a projected improvement, it becomes the duty of the county board to provide the necessary county funds. Fifty per cent of the county's share of the cost, but not to exceed one thousand dollars per mile, may be assessed by the county board against the municipality in which the improvement lies. The work may be executed either by contract or by day.

STATE AID PLAN—The annual appropriation for state aid is $785,000, which is allotted to the counties in proportion to their assessed valuation. The counties, in order to receive their allotments, must provide additional funds in the manner hereafter explained. All improvements with state aid must be made on the county systems of prospective state highways (which aggregates about 20,600 miles and includes the state trunk highway system) at points determined by the county board. Not less than $3,000 can be appropriated for any single improvement, unless it can be entirely completed for a less amount. The county board may assess any amount not exceeding forty per cent of the county's share of the cost, as a special benefit, against the municipality in which the improvement lies.

The second half of the county's allotment is then distributed among the municipalities of the county, unbenefited by an improvement on the state trunk highway system, projected for the same season. The county is required to appropriate county aid in an amount at least equal to the amount of the state aid, and to levy a tax against the municipality in an amount not greater than the county aid nor less than the state aid.

In the distribution of state aid among municipalities, previous bond issues must be considered, as hereafter explained. The location of all state aid improvements, and the type, is determined by the county board. The plans must be approved by the state highway commission and the work done subject to its supervision.

FINANCES—As has already been stated, the cost of federal aid work is borne in substantially equal parts by the federal government, the state, and the counties.

The United States government's share is provided by an appropriation from "any funds in the treasury not otherwise appropriated." This means that payment is made from the general revenues of the government. The state's share is derived from the proceeds of automobile license fees in the manner hereafter explained. The county's share may be provided either by a direct tax or by bonds. The most important features of the bond laws are discussed later in this article.

It has also been explained that the cost of state aid work is borne jointly by the state, the counties, and municipalities. Though there is a persistently prevailing idea that each pays one-third, this is not the fact; in reality the percentage paid by each unit may vary widely.

Another erroneous impression is prevalent among many officials who should know better that if a municipality makes an appropriation for state aid work, the county and the state will provide like amounts. In fact, the amount of state aid that can be received by any county is a fixed figure, depending on the amount of the state appropriation and the county's assessed valuation. The minimum appropriation made by the county to claim the first 50 per cent of its state aid money must exceed this amount (50 per cent of the allotment) by at least one-half, it may be greater. Likewise, the sum available jointly from the county and its municipalities must be at least double the second 50 per cent of the state aid money. But exceeding these minimum allowances will not increase the amount allotted by the county for distribution.

The state appropriation for state aid for highways is made from the general fund of the state, which is derived from the taxation of public utilities, inheritances, etc. The county's share of the cost of state aid work may be provided by the county either through direct taxes or from the proceeds of bond issues. The municipality's share of the cost of state aid work must be provided through direct taxation, though contributions may be accepted by either counties or towns and applied in the same manner as an appropriation.

AUTOMOBILE LICENSE FEES.

Mention has been made that the state's share of the cost of federal aid construction is defrayed from the proceeds of automobile license fees. An explanation of the disposition of the total funds derived from this source is therefore in order.

In considering the construction and maintenance program inaugurated by the passage of the state law assenting to the federal aid law (Chap. 175, Laws of 1917), the legislature decided that a portion of the cost at least, could equitably be assessed against those who derived the greatest benefit from the contemplated highway improvements namely—the operators of motor vehicles. The license fees which had previously been fixed at $5.00 per car per year were raised to $10.00 per car per year, with greater license fees for trucks, varying according to the capacity. The net proceeds, remaining after the cost of collection including the cost of the license plates, were then disposed of in the following manner:

1. Twenty-five per cent of the net proceeds are returned to the counties in the proportion paid in by residents of the counties, to be used for the maintenance of the county systems of prospective state highways. The total amount thus returned to the counties for the fiscal year ending June 30, 1918, was $489,857.

2. A sum is then appropriated for the state highway commission to defray the expense of administering construction and maintenance on the state trunk highway system. The maximum thus available is $80,000 per year.

3. From the amount remaining after payments due under 1 and 2 have been made, a sufficient sum is then appropriated to pay the state's share of the cost of federal aid construction. The amount used for this purpose during the fiscal year ending June 30, 1918, was $381,232.

4. After all payments due under 1, 2 and 3 have been made the remainder is appropriated for the maintenance of the state trunk highway system and apportioned to the counties in proportion to their mileage of roads on the state trunk highway system.

The amount thus available for the fiscal year ending June 30, 1918, was $1,008,339, which is $201.71 a mile of the state trunk highway system. A discussion of the details of the maintenance work is found under the heading "State Trunk Highway Maintenance."

BONDS.

The state highway law provides for the issue of highway bonds by both counties and towns for the improvement of the prospective state highway system or of the state trunk highway system. The issue of highway bonds by the state is unconstitutional.

County bonds may be issued by action of the county board or by a popular vote. The maximum issue possible by the former method, at one session of the county board, is two-fifths of one per cent of the assessed valuation of the county; the aggregate of such issues outstanding at any one time must not exceed one per cent of such valuation. County bond issues may be submitted to a popular vote at the regular April or November elections, either by resolution of

the county board or through petition of electors. The maximum issue under this plan is fixed by the constitutional limitation (five per cent (5%) of the county valuation) upon the counties to incur indebtedness.

County bonds may be used directly to provide the county's share of federal aid or state aid construction, or, as is advisable, where the bond issue is large and the work done thereunder extensive, the amounts received by the county under the state aid law may be applied toward the payment of these bonds.

All work done with county bonds is subject to the supervision of the federal government, if the work is federal aid work, otherwise, the work is subject to the supervision of the state highway commission.

Town bonds for the improvement of the county system of prospective state highways may be authorized by a majority vote at town meeting. The proceeds of town bonds are not available to obtain state aid, nor is any issue valid unless the county board issues bonds for the same improvement in a like amount. The maximum issue possible is fixed by the constitutional limitation on municipal indebtedness.

During the first years of the operation of the state highway law, the proceeds of town bonds might be used to secure state aid. Several towns had issued bonds prior to the amendment of 1917, which amendment provided that town bond issues could not draw state aid. For the protection of these towns, who relied on state aid money to meet their bond payments, the legislature provided that in the distribution of state aid allotments, the county boards should set aside for such towns, to apply toward the payment of their bond issues, amounts not less than the average of the amounts received for this purpose each year since the bonds were issued.

SUMMARY—The similarity between the federal aid and state aid plans is very striking. In each case we have the three units of government participating in the work. The second largest unit, in each case, determines the location and character of the improvement, and executes the construction, subject to the supervision and approval of the major unit. The major unit in each case offers a financial inducement to encourage construction and protects its interest by supervising the work.

In each plan the work is confined to systems of preferred highways; under the federal aid plan, to the state trunk highway system of 5,000 miles; under the state aid plan, to the county systems of prospective state highways aggregating approximately 20,600 miles. The first system includes roads which are of state and national importance, the second system includes the roads of county importance. All roads on the first system, practically are included in the second, the excess mileage being those roads not of importance outside of the immediate locality. Thus, all improvements with federal aid, are improvements to the county systems of prospective state highways, and likewise, a large percentage of improvements with state aid are on the state trunk highway system. The state highway commission is actively connected with both, in an executive capacity on the federal aid work, and in a supervisory capacity on the state aid work. All improvements, with both federal and state aid, are thus coordinated, and jointly produce the systematic betterment of the highways of the state.

While each legislature since the original enactment has amended the state aid law, this has been in details and not in fundamentals. Public sentiment at first skeptical, has become more and more favorable. It is therefore believed that the plan followed is fundamentally correct and will continue unchanged except in details.

CHAPTER XIII

PENALTIES; REMOVAL OF ASSESSORS; FINES FOR WILFUL DISCRIMINATION; MALFEASANCE IN OFFICE

Removal; assessors; boards of review; procedure. SECTION 17.14. [1059a-d] Any assessor and any member of a board of review or of a county board of supervisors, in addition to being removable as otherwise provided, may be removed by the presiding judge of the circuit court for his county, in term time or vacation, as follows:

(1) **Assessors.** Any assessor for one or more of the following causes:

(a) Wilful or intentional assessment of property at other than its true cash value with the intent to subject such property to more or less than its lawful share of taxes.

(b) Wilful or intentional omission of taxable property from the assessment roll with intent to permit the same to escape taxation.

(c) Wilful or intentional assessment of the property of one person at a lower value than the property of another or others whereby favoritism or discrimination between taxpayers in the district is shown.

(d) Solicitation or receipt of any favor, reward, money or other thing of value of or from the owner of any taxable property in his assessment district for the assessment or valuation of property at other than its true cash value.

(e) Solicitation or demand by any assessor of any owner of property liable to assessment in his assessment district to aid, assist or promote the business or interests of such assessor by means of which and by virtue of his office he shall gain or receive pecuniary profit or advantage that he could not otherwise have gained or received.

(f) Any violation of law in the valuation or assessment of property in his assessment district.

(2) **Members of boards of review and county board.** Any supervisor, alderman, trustee or other officer who acts as a member of a board of review or of the county board of supervisors, for one or more of the following causes:

(a) Wilful or intentional valuation or equalization of property of persons or towns, cities or villages at other than the true cash value thereof, with the intent to subject the property of persons or of towns, cities or villages to more or less than their lawful share of taxes.

(b) Aiding, abetting or assisting in any understanding, combination or conspiracy to value or equalize the property in towns, cities or villages in a county at other than the true cash value, with intent to subject the property in one or more towns, cities or villages to more or less than its lawful share of taxes for state or county purposes or both.

(c) Any violation of law in the valuation or equalization of property in towns, cities or villages or in the discharge of official duties.

(3) **Procedure.** Removals under this section may be made by the circuit judge in term time or vacation, by order specifying the cause thereof, a copy of which order shall be certified by the circuit judge to the proper town, village or city clerk. Such removal shall be made only upon a duly verified petition signed by a freeholder and taxpayer of the county setting forth fully the charges preferred against such officer. The district attorney of the county upon complaint showing cause therefor shall prepare the petition and have the same duly verified by the complainant. The judge, upon the presentation of the petition, shall by an order to show cause, which shall be served upon such officer personally at least ten days prior to the hearing, fix a time and place for hearing the matters alleged in the petition. The testimony shall be taken and the proceedings conducted under such reasonable regulations as the judge shall prescribe. The district attorney shall attend the hearing and conduct the proceedings on behalf of the petitioner. The removal of such officer shall disqualify him from holding such office for three years from the date of the order of removal.

(4) **Costs.** If the presiding judge, after a hearing on the merits dismisses the petition and further finds the complaint was wilful and malicious and without probable cause, such judge shall order judgment in favor of the officer and against the petitioner for ten dollars attorney's fees and for the costs and fees of witnesses and officers incurred on behalf of such officer. The judgment shall be signed by the clerk of the circuit court and entered and docketed in his office as the judgment of the circuit court in term. An execution may be issued thereon against the property of the petitioner in the same mode as upon a judgment entered in the circuit court in civil actions founded in tort. Upon the return of such execution unsatisfied in whole or in part, an execution against the person of the petitioner may be issued in the manner and with the force and effect of an execution against the persons as provided in sections 2965 to 2975, inclusive, of the statutes. In all other cases the judge may, in his discretion, order that the expenses incurred in procuring witnesses and other needed actual expenses, be paid out of the treasury of the county in which such officer resides upon certificates of the clerk of said court.

Sections 1059a to 1059d revised and renumbered by chap. 362, 1919.

Enforcement of liability. SECTION 1311. If any town, city or village shall refuse or neglect to open and keep in repair any state or

county road therein or any part of any such road and the county clerk shall receive a written notice of such neglect, signed by at least six freeholders of the county, he shall immediately notify the proper town chairman, mayor or village president to cause such road to be opened or repaired within a certain number of days, not less than thirty, to be stated in such notice, and that if said road be not opened or repaired the same will be opened or repaired by the county and the expense thereof charged to such town, city or village. If such road shall not be so opened or repaired the chairman of the county board or county road commissioners in those counties having such commissioners shall cause the same to be opened or repaired; and he or they shall keep an accurate account of the expense of opening or repairing the same, and when audited and allowed by the county board it shall be charged to such town, city or village and be added by the county clerk to the next county tax apportioned thereto and collected therewith.

Not assessing property at true value. SECTION 4548a. Any assessor who shall ask, solicit or receive from the owner of property situated in and liable to assessment in his assessment district, or the agent or attorney of such owner any reward, favor, money or other thing of value for the valuation or assessment of said property of such owner, at less than the true cash value thereof or at a lower value than such property should have been assessed, shall be punished by imprisonment in the county jail not more than six months or by fine not exceeding five hundred dollars.

Corrupt solicitation. SECTION 4548b. Any person who shall ask or solicit any trade or business of or from the owner of any property situated in and liable to assessment in his assessment district, or the agent, attorney or any member of the family of such owner, in pursuance of any agreement, expressed or implied, that in consideration of such trade or business, in whole or in part or otherwise, the said property of such owner shall be valued or assessed at less than the cash value thereof, or less than the property would otherwise be valued and assessed, shall be punished by imprisonment in the county jail not more than six months or by a fine not exceeding five hundred dollars.

Liability of property owner. SECTION 4548c. Every person who shall offer to give or shall give directly or indirectly, to any assessor, or member of a board of review, or for his use or benefit, any reward, money or other thing of value, to assess or value the property of such person at less than its true cash value or lower than it should be assessed or valued, shall be punished by imprisonment in the county jail not more than six months or by a fine not exceeding five hundred dollars.

Failure of assessor to perform duty. SECTION 4548d. Any assessor who shall intentionally fix the value of any property assessed

by him at less or more than the true value thereof prescribed by law for the valuation of the same, or shall intentionally omit from assessment any property liable to taxation in his assessment district, or shall otherwise intentionally violate or fail to perform any duty imposed upon him by law relating to the assessment of property for taxation, shall forfeit to the state not less than fifty dollars nor more than two hundred and fifty dollars.

Liability of board of review. SECTION 4548e. Any member of the board of review of any assessment district who shall intentionally fix the value of any property assessed in such district, or shall intentionally agree with any other member of such board to fix the value of any of such property at less or more than the true value thereof prescribed by law for the valuation of the same, or shall intentionally omit or agree to omit from assessment, any property liable to taxation in such assessment district, or shall otherwise intentionally violate or fail to perform any duty imposed upon him by law relating to the assessment of property for taxation, shall forfeit to the state not less than fifty nor more than two hundred and fifty dollars.

Liability for damages. SECTION 4548f. If any assessor or any member of the board of review of any assessment district shall be guilty of any violation or omission of duty as specified in sections 4548d and 4548e he shall be liable in damages to any person or persons who may sustain loss or injury thereby, to the amount of such loss or injury; and any person sustaining such loss or injury shall be entitled to all the remedies given by law in actions for damages for tortious or wrongful acts.

Public officers; malfeasance; penalty. SECTION 4549. Any officer, agent or clerk of the state or of any county, school district, school board or city therein, or in the employment thereof, or any member of any town board or village board, or any officer, regent, treasurer, secretary, superintendent, clerk or agent of any penal, correctional, educational or charitable institution instituted by or in pursuance of law within this state, or any member of any body or board having charge or supervision of such institution who shall have, reserve or acquire any pecuniary interest, directly or indirectly, present or prospective, absolute or conditional, in any way or manner, in any purchase or sale of any personal or real property or thing in action, or in any contract, proposal or bid in relation to the same, or in relation to any public service, or in any tax sale, tax title, bill of sale, deed, mortgage, certificate, account, order, warrant or receipt made by, to or with him in his official capacity or employment, or in any public or official service, or who shall make any contract or pledge, or contract any indebtedness or liability, or do any other act in his official capacity or in any public or official service not authorized or required by law, or who shall make any false statement, certificate, report, return or entry in any book of accounts or of records in respect to

anything done or required to be done by him officially, or in any public or official service, or who shall ask, demand or exact for the performance of any service or duty imposed upon him by law any greater fee than is allowed by the law for the performance of such service or duty, shall be punished by imprisonment in the county jail not more than one year, or in the state prison not more than five years, or by fine not exceeding five hundred dollars; but the provisions of this section shall not apply to the designation of public depositories for public funds, nor to the publication of legal notices required to be published by any town, village or county, or by any town, village or county officer, at a rate not higher than that prescribed by law, nor to contract for the sale of printed matter or any other commodity, not exceeding one hundred dollars in any one year.

Electors of a town cannot give away the money of the taxpayers, and an order based upon a vote of the electors allowing one of the supervisors $200 upon a claim of only $175, for loss of a horse is void. *Menasha Woodcn Ware Co. v. Winter*, 159 Wis. 437.

Sec. 4549, Stats. 1913, which makes it an offense for any town officer to have, reserve, or acquire any pecuniary interest, directly or indirectly, present or prospective, absolute or conditional, in any "purchase or sale of any personal or real property or thing in action," or in any contract or bid relating thereto, applies as well to sales by such officer directly to the town as to sales made by other persons in which he has or acquires an interest; and all contracts in contravention of the statute are absolutely void. *Menasha Wooden Ware Co. v. Winter*, 159 Wis. 437.

A town has no power to pay a debt of a poor person for house rent, or any other debt of such person, which was not lawfully incurred on the credit of the town. *Menasha Wooden Ware Co. v. Winter*, 159 Wis. 437.

A claim for damages to a ladder, though small in amount, must be passed upon by the electors before the town board has authority to pay it. *Menasha Wooden Ware Co. v. Winter*. 159 Wis. 437.

A town has no authority to expend money for street lighting, and a purchase by the town board for that purpose is ultra vires and void. *Menasha Wooden Ware Co. v. Winter*, 159 Wis. 437.

Grafting. SECTION 4549g. Except as specifically authorized by statute, no officer or employe of the state shall, directly or indirectly, receive or accept any sum of money, or anything of value, for the furnishing of any information, or performance of any service whatever relating in any manner to the duties of such officer or employe. Any person violating this section shall be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars, or more than six months' imprisonment in the county jail, or by both such fine and imprisonment.

Purchase or discount of claims forbidden. SECTION 4550. Any person mentioned in section 4549 who shall pay, redeem, discount or purchase any debt, claim or demand in favor of any other person, against the state, or any county, town, school district, school board, city or village therein, or against any fund thereof below the true and full amount thereof, or who shall pay any such debt, claim or de-

mand for any purpose out of any fund not provided for such purpose, or who shall wilfully violate any provision of law authorizing or requiring anything to be done or prohibiting anything from being done by him in his official capacity or employment, or who shall refuse or wilfully neglect to perform any duty in his office required by law, or shall be guilty of any wilful extortion, wrong or oppression therein shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding five hundred dollars.

Misuse of trust funds. SECTION 4550m. Any supervisor, chairman of any town or county board, mayor of any city, president of any village or treasurer of any town, city or village who shall make or sign any order or warrant, or pay out or suffer or cause to be appropriated or paid out any moneys derived by loans from the state trust funds contrary to the provisions of section 25.10, shall be punished by confinement at hard labor in the state prison for a term not exceeding five years or by fine not exceeding one thousand dollars or by both such fine and imprisonment.

Officers not to buy at tax sales. SECTION 4551. Any county treasurer or county clerk or any of their deputies or clerks, or any other person for them or any of them, who shall purchase, directly or indirectly, any property sold for taxes at any tax sale or any tax certificate or tax deed held by the county, except for and on behalf of the county as now provided by law, shall be punished by imprisonment in the county jail not more than six months or by fine not exceeding one hundred dollars; and any tax deed or tax certificate issued upon such unlawful purchase shall be null and void; but no money paid into the county treasury on account thereof shall be refunded to such purchaser or to any person on his behalf.

Appointing deputy for reward. SECTION 4552. Any person holding or exercising any office under the laws or constitution of this state who shall, for any reward or gratuity paid or promised, grant to another the right or authority to discharge any of the duties of such office as deputy or otherwise, or any person who shall give or promise any such reward or gratuity in consideration of any such grant or deputation shall be punished by fine not exceeding five hundred dollars, and such grant or deputation shall be void; and such officer so offending shall forfeit his office and be disabled from holding the same for the remaining term thereof.

CHAPTER XIV

FORMS FOR TOWN, CITY AND VILLAGE OFFICERS.

The following are some of the more common forms required by the statutes in the performance of the duties of town, city and village officers, in so far as these duties pertain to the subject of taxation. Forms for other purposes will be found in the pamphlet on town laws issued by Lyman J. Nash, Reviser of Statutes, and his assistant, Arthur F. Belitz.

Sec. 6.12. Notice of election by town or village clerk.

Notice is hereby given that the ensuing general election, at which are to be elected the following officers, to wit *(here give the substance of the notice received from the county clerk)*, will be held at ——, in the town *(or* village) of —— *(or* —— ward of ——), on the —— day of November next, and that the polls of said election will be open at nine o'clock in the forenoon and closed at sundown on that day.

Dated ——, 19—.

(Signature of town or village clerk or inspectors.)

Sec. 6.64. Certificate of determination of persons elected.

STATE OF WISCONSIN, }
County of ————. } ss.

We, —— ——, county clerk —— —— *(give official title)*, and —— —— *(give official title)*, in and for said county, constituting the board of county canvassers for said county, do hereby certify that we have determined that the within named —— —— is duly elected to the office of —— and that —— —— is duly elected to the office of —— *(continuing according to the facts)*.

Given under our hands at the office of the county clerk at ——, this —— day of ——, A. D. 19—.

(Signatures of county clerk and board of county canvassers.)

Sec. 6.65. Certificate of election.

STATE OF WISCONSIN, }
County of ————. } ss.

I, —— ——, county clerk of said county, do hereby certify, that at the general election held in the several towns *(villages and wards, if there is a village or city in the county)* in said county on the —— day of November, 19—, —— —— was by the greatest number of votes elected a state senator *(or* member of assembly *or* sheriff *or* any other

officer as the case may be), for said county of ——. *(If the officer is required to give a bond add a statement of the amount thereof as fixed by law, or by the action of the county board.)*

Given under my hand and official seal at ——, this —— day of ——, 19—. [Seal.] *(Signature of county clerk.)*

Sec. 809. Notice by town clerk to persons elected to town office.

To —— ——:

You are hereby notified, that at the annual town meeting held in and for the town of ——, in the county of ——, on the —— day of ——, you were duly elected to the office of —— *(if oath or bond is required, it would be well to add)*, if you neglect to file your oath *(and bond)* of office within ten days after receiving this notice, such neglect is by law deemed a refusal to serve in such office.

Dated this —— day of ——, 19—. *(Signature of town clerk.)*

Sec. 809. Oath of town officer.

STATE OF WISCONSIN, County of ————.

I, —— ——, having been elected *(designate office)* in and for the town of ——, in said county, do solemnly swear *(or* affirm) that I will support the constitution of the United States, the constitution of the state of Wisconsin, and will faithfully discharge the duties of the office of ——, to the best of my ability. So help me God.

(Signature.)

Subscribed and sworn to before me this —— day of ——, 19—.

(Signature of justice of the peace or notary public.)

Sec. 818. Appointment to fill vacancy in town board.

We, —— —— and —— ——, two supervisors of the town of ——, and —— ——, town clerk thereof, do hereby appoint —— —— to fill the vacancy in the town board of said town, occasioned by the death *(or* resignation *or* removal from said town) of —— ——, late a member of said board.

Given under our hands this —— day of ——, 19—.

(Signature of supervisors and town clerk.)

Sec. 818. Appointment of town treasurer.

Whereas, —— ——, treasurer-elect of said town of ——, refuses to serve *(or* Whereas, the office of treasurer of said town of ——, has become vacant by the death *or* resignation *or* otherwise, of —— ——, late town treasurer thereof; *or* Whereas, —— ——, treasurer of said town of ——, is unable from sickness *or* other cause to perform his official duties), we, the undersigned town board thereof, do hereby appoint —— —— as treasurer of said town, for the remainder of the term of office of said —— ——.

Given under our hands this —— day of ——, 19—.

(Signatures of town board.)

Sec. 818. Temporary appointment by town board to fill vacancy in town office, other than supervisor, treasurer and justice of the peace.

Whereas, the office of ——, of the town of ——, has become vacant by the death *(or* resignation *or* other cause) of —— ——, late incumbent thereof *(or* Whereas, —— ——, of the town of —— is unable

from sickness *or* otherwise to perform his official duties), we, the undersigned town board, do hereby appoint —— ——, of said town, to discharge the duties of said office until the same is filled by election *(or* until the disability of said —— —— is removed).

Given under our hands this —— day of ——, 19—.

(Signatures of town board.)

Sec. 820. Notice of special meeting of town board as a board of audit.

To —— ——, supervisor:

SIR: The undersigned, two members of the town board of ——, deeming a special meeting of said board necessary for the purpose of auditing and settling charges against said town, hereby notify you that such meeting will be held at *(specify place)* on the —— day of ——, 19—, at —— o'clock in the —— noon.

Dated this —— day of ——, 19—. *(Signatures of supervisors.)*

Sec. 821 sub. (2). Claim against town on account.

To —— ——, town clerk of the town of ——:

Take notice that I, the undersigned claimant, of ——, hereby make claim against the said town of ——, in the sum of —— dollars, upon an open account for services performed by me for said town *(or* for goods and merchandise sold and delivered by me to said town) a true copy of which account is hereto attached.

Dated the —— day of ——, 19—. *(Signature of claimant.)*

(Attach itemized statement of account, verified as follows):

STATE OF WISCONSIN, }
County of ————. } ss.

—— ——, being duly sworn, says that the above and foregoing account is just and true, that there are no offsets thereto, nor have any payments been made thereon (except those named in said account), and that there is now justly due and owing thereon to this affiant from the said town of —— the sum of —— dollars (with interest from ——).

(Signature of claimant.)

Subscribed and sworn to before me this —— day of ——, 19—.

(Signature of notary public.)

Sec. 830. Chairman's approval of town clerk's bond.

I hereby approve the sufficiency of the sureties named in the within bond.

Dated this —— day of ——, 19—.

(Signature of chairman of town board.)

Sec. 830. Certificate by town treasurer of certified copy of town clerk's bond.

I, —— ——, town treasurer of the town of ——, in the county of ——, do hereby certify that I have carefully compared the above and foregoing bond with the original and official bond of —— ——, town clerk of said town, on file in my office, and that the same is a true copy thereof, and of the whole thereof

Dated this —— day of ——, 19—. *(Signature of town treasurer.)*

SEC. 832 SUB. (2). CERTIFIED STATEMENT OF TOWN OFFICERS ELECTED.

To the county clerk of the county of ——:

The undersigned, clerk of the town of ——, county of ——, hereby certifies that the following is a true and correct statement of all town officers elected in said town at the annual meeting thereof held on the —— day of ——, 19—:

Name	Office	Post-office address
.....	.....	.....
.....	.....	.....

Dated this —— day of ——, 19—. *(Signature of town clerk.)*

SEC. 835. BOND TO BE GIVEN BY TOWN TREASURER.

Know all men by these presents that we, —— ——, of the town of ——, in the county of ——, in the state of Wisconsin, as principal, and —— —— and —— ——, of said county and state, as sureties, are held and firmly bound unto the town of ——, in said county, in the sum of *(not less than the whole amount of money estimated to come into his hands during his term)* —— dollars to be paid to the said town; for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this —— day of ——, 19—.

Whereas, the above bounden —— —— was elected *(or* appointed) to the office of treasurer of the town of ——, on the —— day of ——, 19—:

Now the condition of this obligation is such, that if the said —— —— shall faithfully discharge the duties of his said office of treasurer, and faithfully and truly account for and pay over, according to law, all moneys which shall come into his hands as such treasurer, including all moneys received from the state or county on account of the drainage fund, the school fund income, or any other account whatever, then this obligation shall be void; otherwise to remain in full force and effect.

Signed, sealed and delivered in presence of:

(Signatures of two witnesses.) *(Signatures and seals.)*

(Approval of Above Bond to be Indorsed Thereon.)

I hereby approve the within bond, both as to the form thereof and the sufficiency of the sureties.

Dated this —— day of ——, 19—.

(Signature of chairman of town board.)

SEC. 836m. CERTIFIED STATEMENT OF AMOUNTS PAID BY TOWN TREASURER TO SCHOOL DISTRICT TREASURER DURING NEXT PRECEDING YEAR.

Statement of the amount of money paid by the undersigned, town treasurer of the town of ——, during the year next preceding the last Monday in June, A. D. 19—, to —— ——, district treasurer of school district *(or* joint school district) number —, of said town

Year	Month	Day	On What Account	Amount
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

I hereby certify that the foregoing statement is correct.
Dated this —— day of ——, A. D. 19—.

(Signature of town treasurer.)

Sec. 838. Statement of town treasurer of account with county treasurer.

Statement of amount of money received by —— ——, as treasurer of the town of ——, in the county of ——, which he has paid or ought by law to pay over to the treasurer of said county, for and during the year *(or other period, specifying it)* preceding the date hereof:

When received	From whom received	For what paid	Amount	Date of payment to county treasurer	Amount
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....

Amount received as town treasurer to be paid to county treasurer $——
Amount paid over to county treasurer..... $——
Dated this —— day of ——, 19—.

(Signature of town treasurer.)

I, —— ——, town treasurer of the town of ——, do hereby certify that the foregoing statement by me made is in all respects true and correct, and that the same contains the full amount of moneys so received by me during the period of time included therein, being from the —— day of ——, 19—, to the —— day of ——, 19—, inclusive.

In witness whereof, I have hereunto set my hand this —— day of ——, 19—.

(Signature of town treasurer.)

Sec. 832m. Notice to town treasurer of apportionment of school moneys by the town clerk.

To the treasurer of the town of ——:

You are hereby notified that I have apportioned the school moneys now in your hands to the different districts of the town, as follows:

District	Name of Clerk	Post Office
No. 1		
No. 2		
No. 3		
No. 4		
No. 5		
No. 6		
Joint No. 1		
Joint No. 2		
Joint No. 3		

The post-office address of the undersigned is ——.
Dated this —— day of ——, 19—. *(Signature of town clerk.)*

Sec. 28.03. Application for exemption from taxes—Forestry lands.

To the assessor of the town of ——:
I, —— ——, owner of the —— *(describe the land)* hereby give notice that I have set apart —— acres of said tract of land, more particularly described as follows *(describe land)* for the purpose of growing forest trees thereon. That I have planted and have growing on said tract of land about —— trees per acre. That I give this notice and hereby make application for exemption of said land from taxation under the provisions of the statute relating to the encouragement of forestry. That a plat of said land is attached to this application and made a part thereof.
Dated at ——, Wisconsin, this —— day of ——, 19—.
(Signature.)

I, —— ——, assessor of the town of ——, county of ——, hereby certify that I have examined the premises described in the above application of —— —— and find on the same, forest trees planted and growing of the variety known as ——, in excess of one thousand two hundred per acre.
Dated this —— day of ——, 19—. *(Signature of assessor.)*

Secs. 28.08 and 28.09. Declaration of intention to plant trees.

I, —— ——, owner of *(describe land)* in the town of ——, county of ——, do hereby declare that I have set apart —— acres of said tract of land, more particularly described as follows *(describe tract set apart)* and intend to plant thereon forest trees so as to secure the exemption privilege provided in sections 1494—101 to 1494—111, inclusive, of the statutes; and I hereby request that the valuation of said land be determined in advance of such planting by the board of review for the said town of ——.
(And I further request that such determination be made without delay, for which purpose I have this day deposited with the town clerk of said town of —— the sum of —— dollars, to defray the compensation of the members of said board of review for one day's attendance.)
Dated this —— day of ——, 19—. *(Signature.)*

Sec. 28.09. Notice of meeting of board of review to determine value of land for forest tree plantation.

To the members of the board of review for the town of ——, county of ——:

Whereas, —— ——, owner of *(describe land)* in the town of ——, county of ——, did on the ——day of ——, 19—, in writing declare his intention to plant forest trees on a portion of said lands, described as follows *(describe tract set apart for plantation)*, so as to secure the exemption privilege provided in sections 1494—101 to 1494—111, inclusive, of the statutes, and did duly request a valuation of said tract in advance of such plantation, without delay, by the board of review of said town of ——, and did at the same time deposit with the undersigned town clerk of said town the sum of —— dollars, to defray the compensation of the members of said board of review for one day's

You are hereby notified that a special meeting of the board of review of said town of —— will be held at —— on the —— day of ——, 19—, for the purpose of determining the valuation of said tract, as aforesaid.

Dated this —— day of ——, 19—. *(Signature of clerk.)*

Sec. 40.07. Petition for equalization of joint school district taxes.

To.....

Clerk of Joint School District No.——.

We, the undersigned resident free-holders of that part of the town (or city or village) of ——, embraced within joint school district No. ——, hereby petition for an equalization of the school taxes levied in said district for the current year and the apportionment thereof between the several portions of each town (or city or village) constituting part of the same.

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Sec. 40.07. Notice of meeting of assessors to equalize joint school district taxes.

To the assessors of all towns, cities or villages, any part of which is included in joint school district No. ——.

(Copy to each assessor.)

You are hereby notified that three resident freeholders of that part of joint school district No. —— lying within the town (or city or village) of —— have petitioned for an equalization and apportionment of the school taxes levied in said district for the current year, and that a meeting of the assessors of said towns (or cities or villages) will be held at the school house in said school district on the —— day of ——, at —— o'clock (A.M. or P.M.) for the purpose of comparing and investigating the assessed valuation of the taxable property in the several parts of such district separated by town, city or village lines, and of apportioning the school taxes levied therein among the parts of each of said towns (or cities or villages) embraced within said joint school district.

Dated this —— day of ——, 192—.

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School District Clerk.

Sec. 40.07 Equalization of tax assessment in a joint school district.

To district clerk of joint school district number —— of towns of —— and ——:

Whereas, joint school district number —— of the towns of —— and —— is composed of territory described as follows, to wit: Sections *(give description)* in said town of —— and section *(give description)* in said town of ——.

Upon the petition of —— ——, —— —— and —— ——, freeholders residing in that part of said joint school district situated in the town of ——, duly filed with the clerk of said joint school district; and upon due notice given by said clerk; we, the undersigned, assessors of the towns of —— and —— *(or* of the town of —— and village of —— *or* city of ——) having duly met at the district schoolhouse in said district on the —— day of ——, 19— *(if unable to agree, say,* and being unable to agree as to the relative proportion of district taxes to be assessed upon the several parts of said district, the assessor of incomes of the county of —— was called to our aid) and having compared the relative valuation of taxable property in the several parts of said district separated by town lines, as aforesaid, and considering the same to be unjust.

Now, Therefore, it is hereby determined that the fair and just proportion of school taxes levied in joint school district No. —— for the current year properly chargeable to each part of said school district separated by town, city or village lines is as follows:

That part of said joint school district embraced within the Town of —— ..... $——
That part of said joint school district embraced within the Town of —— ..... $——
That part of said joint school district embraced within the Village (or City) of —— ..... $——
Total ..... $——

And that said school district taxes should be levied and extended on the tax rolls accordingly.

(Signatures of assessors of all towns interested)
(Signature of assessor of incomes if called in)

Sec. 1060 sub. 3. Notice of meeting of town board of review.

Notice is hereby given that the board of review for the town of —— will meet at the office of the undersigned, town clerk thereof, on the —— day of ——, 19— *(last Monday of June)*, at —— o'clock in the ——noon, for the purpose of reviewing and examining the assessment roll of real and personal property in said town, and all sworn statements and valuations of real and personal property therein, and bank stock, and correcting all errors in said roll, whether in description of property or otherwise, and to perform such other duties as are imposed upon it by law.

Dated this —— day of ——, 19—. *(Signature of town clerk.)*

Sec. 1061, sub. 3. Notice of raising valuation.

To —— ——:

SIR: It appearing to the board of review of the town of ——, from the evidence before it that certain real *(or* personal) property therein, to wit: *(describe the same)*, for which you are liable to assessment, has been valued by the assessor too low *(or* has been omitted from the assessment roll) for the year 19—, you are hereby notified that the said board of review will be in attendance at the office of the town clerk of said town, on the —— day of ——, 19—, at —— o'clock in the ——noon of said day, at which time and place it intends to raise the valuation of said *(or* to place upon said roll and assess such

omitted) property, at which time and place you may be heard before the board in relation thereto, if you desire.

Dated this —— day of ——, 19—.

(Signature of clerk of board of review.)

Sec. 1077c. Appeal from county equalization.

The undersigned, chairman of the town of —— *(or* president of the village of —— *or* mayor of the city of ——) county of ——, in behalf of said town *(or* village *or* city), having been duly authorized so to do by resolution *(or* order) adopted by the town board of said town *(or* village board of said village *or* mayor and common council of said city) on the —— day of ——, 19—, does hereby appeal to the Wisconsin tax commission from the assessment and determination of the relative value of the taxable property in the several assessment districts of said county of ——, made by the county board thereof on the —— day of ——, 19—, pursuant to section 1073 of the statutes, for the purpose of obtaining a review and redetermination of the valuation of property in all the assessment districts of said county *(or* in the said town of —— *or* towns of —— and ——, said county *or* village *or* city of —— in said county) as to the real estate *(or* as to the personal property *or* both as to real and personal property) therein upon the ground that *(state plainly and concisely, without unnecessary repetition, the facts constituting the grievance sought to be remedied on the appeal).*

Dated this —— day of ——, 19—.

(Signature of town chairman or village president or mayor.)

STATE OF WISCONSIN,)
County of ————.) ss.

—— ——, being first duly sworn, says that he is duly elected and qualified chairman of the town of —— *(or* president of the village of —— *or* mayor of the city of ——), in said county, and the person who made and signed the foregoing declaration of appeal; that he has read the same and knows the contents thereof, and that the same is true to his own knowledge. *(Signature.)*

Subscribed and sworn to before me this —— day of ——, 19—.

(Signature of notarial officer.)

Sec. 1077d. Notice of hearing in appeal from the county equalization.

OFFICE OF WISCONSIN TAX COMMISSION.

In the matter of the appeal of the town *(or* city *or* village) of ——, —— county, Wisconsin, from the equalization made by the county board of said county for the year 19—.

Whereas, the town *(or* city *or* village) of ——, —— county, Wisconsin, has apepaled to the Wisconsin tax commission, as authorized by sections 1077*a* to 1077*l* of the statutes, from the assessment and determination of the relative value of the taxable property in the several assessment districts of said county made by the county board thereof on the —— day of ——, 19—, pursuant to section 1073 of the statutes.

Now, therefore, it is ordered that a preliminary hearing upon said appeal be had before the Wisconsin tax commission at the courthouse in the village *(or* city) of —— *(or other place)*, in said county on the —— day of ——, 19—, at ——o'clock in the ——noon, for the purpose of investigating such assessment and determining whether or not said

appeal should be entertained and a review of such equalization ordered, as provided by the sections of the statutes aforesaid.

Dated at the capitol at Madison this —— day of ——, 19—.

WISCONSIN TAX COMMISSION.
By —— ——, Secretary.

Sec. 1080. Town treasurer's bond for state and county taxes.

Know all men by these presents, that we, —— ——, as principal, and —— —— and —— ——, as sureties, all of ——, are held and firmly bound unto the county treasurer of —— county, in the state of Wisconsin, in the penal sum of *(double amount of state and county taxes apportioned to town not exceeding five hundred thousand dollars)*, to which payment, well and truly to be made to said county treasurer or his successor in office, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this —— day of —— A. D. 19—.

The condition hereof is such that if the above bounden —— ——, who is town treasurer of the town of —— in said county, shall faithfully perform the duties of his office of treasurer, and shall fully account for and pay over according to law all state and county taxes which shall come into his hands, then this obligation shall be void; otherwise to remain in full force and effect.

Sealed and delivered in the presence of:

(Signatures of two witnesses.) *(Signatures and seals.)*

(Form of Approval.)

I hereby approve the within bond, both as to the form thereof and the sufficiency of the sureties.

Dated this —— day of ——, 19—. *(Signature of town chairman.)*

Sec. 1085. Notice to correct assessment after delivery of roll.

To —— —— and —— ——, and to —— ——, assessor:

Whereas, the following described parcels of land situate in the town of ——, viz: Lot 1, in section ——, township No. ——, of range No. ——, belonging to —— ——; and lot 2, in said section, belonging to —— ——, have been erroneously assessed together on the tax roll of said town for the year 19—: You are hereby notified to appear at the office of the undersigned, clerk of said town of ——, on the —— day of ——, 19—, at —— o'clock in the ——noon, to correct the said assessment roll.

Dated this —— day of ——, 19—.

(Signature of town clerk or treasurer.)

Sec. 1087—15. Application for reassessment.

In the matter of the application for the reassessment of the town (or city or village) of ——, —— County, Wisconsin.

The undersigned taxpayers of the town (or city or village) of ——, —— County, Wisconsin, as owners of more than five per cent of the taxable property therein, according to the last assessment respectfully represent and declare that the assessment of real and personal property (or real or personal property as the case may be) in said town (or city or village) for the year 19— has not been made at the true value thereof as the law requires and that the same is unequal and discriminatory as between different taxpayers and classes of property;

that certain taxable property in said town has been assessed at or above its full value, while other taxable property has been assessed at not to exceed —— per cent of its true value; that hereto annexed and made a part hereof is a list of different descriptions of real estate (or items of personal property) with the true and assessed value of each description set opposite the same, showing gross inequality in valuation thereof; that the aggregate assessment of all taxable property in said town (or city or village) for said year, is —— and that the assessment of the taxable property of each of said petitioners for said year is as set opposite his name below; that said assessment has not been made in substantial compliance with law, and that the interest of the public will be promoted by a reassessment of all (or a specific part of) the taxable property in said town (or city or village).

Wherefore, the undersigned petitioners pray for an investigation and reassessment of said property as provided by sections 1087—45 to 1087—57 of the statutes.

Dated this —— day of ——, 192—.

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Sec. 1087—45. Order for preliminary hearing on application for reassessment

OFFICE OF WISCONSIN TAX COMMISSION

In the matter of the application for the reassessment of the town (or city or village) of ——, —— County, Wisconsin.

Whereas, John Doe and several other taxpayers of the town (or city or village) of ——, County of ——, Wisconsin, as owners of more than five per cent of the taxable property in said town, (or city or village) have complained to the tax commission that the assessment of real and personal property (or real or personal property) therein for the year 19— has not been made in substantial compliance with law, and is otherwise unequal and discriminatory, and that the interest of the public will be promoted by a reassessment thereof, and have enumerated sufficient irregularities and defects in the assessment of different persons and classes of property in said town (or city or village) to require an investigation thereof;

Now, therefore, notice is hereby given, that a preliminary hearing on the matter of said complaint and application will be held before the Wisconsin Tax Commission at the city (or village) of —— (name of nearest railroad station or other convenient place) on the —— day of ——, 192—, at —— o'clock (A.M. or P.M.) at which time and place all persons interested in said matter will be given an opportunity to be heard, and the application for reassessment investigated and determined.

Dated at the capitol at Madison, this —— day of ——, 192—.

WISCONSIN TAX COMMISSION,
By —— ——,
Secretary.

Sec. 1087—48. Oath of person appointed to reassess.

STATE OF WISCONSIN,)
County of ————.) ss.

I, —— ——, of ——, Wisconsin, having been appointed by the tax commission to make a reassessment of the taxable property in the ——, —— county, Wisconsin, pursuant to the provisions of sections 1087—45 to 1087—57, inclusive, of the statutes, do solemnly swear that I will support the constitution of the United States, and the constitution and laws of the state of Wisconsin, and that I will faithfully perform the duties imposed upon me by law in respect to such reassessment, to the best of my ability. So help me God. *(Signature.)*

Subscribed and sworn to before me this —— day of ——, 19—.

(Signature of notarial officer.)

Sec. 1087—47. Notice of meeting of reassessment board of review.

Whereas, the persons appointed by the tax commission to reassess the town (or city or village) of —— have notified the undersigned clerk that the reassessment of said town has been or soon will be completed, and requested me to call a meeting of the board of review appointed by the tax commission to examine and correct said reassessment roll;

Now, therefore, notice is hereby given, that the board of review on the reassessment of the town (or city or village) of —— will meet at the office of the undersigned town clerk on the —— day of ——, 192— at ten o'clock in the forenoon of that day for the purpose of reviewing and examining the reassessment roll of real and personal property in said town (or city or village) and all sworn statements and valuations of real and personal property therein, including bank stock, and of performing such other duties as may be imposed upon it by law.

Dated this —— day of ——, 192—.

.....

Town Clerk.

Sec. 1089. Notice as to payment of taxes.

Notice is hereby given by the undersigned, town treasurer of the town of ——, that the tax roll for said town, for the year 19—, is in my hands for collection, and that the taxes charged therein are subject to payment at my office, at any time prior to the first day of February, 19—.

That after the thirty-first day of January, I shall proceed to collect the taxes remaining unpaid in the manner authorized by law.

Dated this —— day of ——, 19—. *(Signature of town treasurer.)*

Sec. 1221. Order declaring streets to be public highways.

Whereas, the plat of the village of —— *(or* other plat) has been duly certified and recorded according to the law, the same not being included within the limits of any incorporated village.

Now, therefore, we, the town board of said town of ——, deeming the streets and alleys in such plat to be necessary for the public use, do order that the same be, and they are hereby declared to be, public highways. *(If only a portion of the streets are deemed necessary for public use, describe such by the names thereof upon the plat; if alleys, describe their position upon plat with reference to lots, blocks, etc.)*

Given under our hands, this —— day of ——, 19—.

(Signatures of town board.)

Sec. 1224a. Order declaring waterway to be a public waterway.

Whereas, the following described waterway *(describe the waterway)* situated in this town of ——, state of Wisconsin, is suitable for general and useful navigation by boats and launches;

Now, therefore, we, the town board of said town of —— do, by this order, adopt the said waterway as a public waterway of said town, to the end that highway funds may be expended thereon in the improvement and maintenance of its navigability, as shall be ordered from time to time.

Dated this —— day of ——, 19—. *(Signatures of town board.)*

Sec. 1239. List of persons liable to highway tax, and assessment thereof.

We, the undersigned, town board of the town of ——, county of ——, having duly met at ——, in said town, on the —— day of ——, 19—, proceeded to assess the highway taxes therein for the ensuing year.

The following list contains:

1. The names of all persons liable to pay a highway poll tax in said town *(make list)*.

2. The name of each person assessed for personal property, and the total amount of each such assessment set opposite thereto *(list of names and amount of tax separately)*.

3. A description of all lots and parcels of land within such district, with the valuation of each lot or parcel set opposite to such description, with the name of the owner or occupant thereof, as the name appears on the last preceding tax roll *(description)*.

And we hereby assess upon the valuation of the real and personal property in said town, a highway tax for the year 19—, at —— mills on the dollar of such valuation, as follows:

Names	Description of land	Section	Town	Range	No. of acres	Valuation of real property	Valuation of personal property	Total valuation	Total
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

Dated this —— day of ——, 19—. *(Signatures of town board.)*

Sec. 1245. Notice by treasurer of highway taxes on hand.

To —— ——, chairman of the town board of the town of ——:

You are hereby notified that there is in the town treasury, the sum of —— dollars, accruing from returned highway taxes which have been properly credited by me and is now available for highway purposes.

Dated this —— day of ——, 19—. *(Signature of treasurer.)*

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